RIGHTS OF COLORED MEN

TO

SUFFRAGE, CITIZENSHIP AND TRIAL BY JURY:

BEING

A BOOK OF FACTS, ARGUMENTS AND AUTHORITIES, HISTORICAL NOTICES AND SKETCHES OF DEBATES—WITH NOTES.

BY WILLIAM YATES.

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ERRATA ET ADDENDA.

In *some* of the copies of this work, the reader will please to make the following corrections. In the reference to the *National Intelligencer*, on page 41, for 1831 read 1821—and on page 42, for January 11 read January 10th and 11th. And on the 89th page of this work, in the 22d line from the top, strike out the word "has," between the words *what* and *took*.——Further: the *references* to several of the speeches on the Missouri question being omitted in their proper place, are here supplied. For Mr. Hemphill's speech, see *National Intelligencer*, daily, Dec. 29—(and tri-weekly, Dec. 30,) 1820; for Mr. Strong's, see *do.* Dec 23; for Mr. Storr's, see *do.* Dec. 12; for H. G. Otis', see *do.* Jan. 1, 1821; for Charles Pinckney's speech, see *Niles' Register*, July 15, 1820, vol. vi., pp. 349, 350.

INTRODUCTION.

Object Stated.

THE object of this book is to call to mind, from the records of the past, some of many testimonies to be found of the rights and services of colored men. The exclusion of this class from social intercourse, throws them into the shade. Comparatively, they are withdrawn from general observation; and this circumstance, of itself, tends to a forgetfulness of their claims. It is a fact, that in proportion as the services they have rendered the country have faded from the memory, so it seems a callousness of feeling towards them has increased.

It is not with the present generation of men, as with the generation who preceded it. Then, when the country had just emerged from the revolutionary struggle—when the services and sufferings of men of color were fresh in the memory—then, as says one who participated in the conflict—"The war over and peace restored, these men returned to their respective States and homes; and who could have said to them, on their returning to civil life, after having shed their blood in common with the whites, for the liberties of the country—'*You* are not to participate in the rights or liberty for which you have been fighting?' Certainly no *white* man." But it is not so now; as is painfully evinced by the successive disfranchisements with which they have been visited, in the constitutions of New Jersey, Connecticut, New York, and by the recent vote of the Reform Convention of Pennsylvania.

History of Services—Materials.

It is to be regretted that effectual efforts were not made at an early day to furnish a history of the services of men of color. Even if it had been a collection of facts and testimonies merely, similar to the present attempt, it would have been a work of interest. Then the materials were more abundant—a greater number than at present were living, who were witnesses of their services; then the task would have been comparatively easy; but even as it is, the subject is a rich one. The present work does not exhaust it; it scarcely more than opens the way; other sources of information exist, which the compiler has not had access to; these should be explored and their hidden treasures brought to light. The records of the pension department at Washington, if examined with this view, would doubtless disclose important facts; and it may be, that, from private letters and correspondence of gentlemen who at an early period took an interest in the abolition of slavery, which may yet be preserved, much valuable information and testimony might be gleaned; and so, doubtless, there are other sources.

The condition of the slave—all that relates to him—the multiplied wrongs he is subject to—the sundering of domestic ties—his scourgings—unrequited toil—mental and moral deprivations—and even his food and sleep; all have been examined and re-examined with minutest care. But the kindred duty we owe to the freeman of color—has it been discharged with equal fidelity? Have the same pains been

taken to guage the height and depth of his embarrassments, aggravated by prejudice, and the legal disabilities which cripple and hinder his progress? Have the same investigations been made into the history of the past to call up from their long repose, the catalogue of proofs which tell of his services and testify to his rights. This will hardly be answered in the affirmative. And yet this ought to be done.

Facts should be collected and published.

There are a multitude of facts, as well relating to the present as the past history of this subject, which the friends of human rights should industriously and systematically seek out; and these as fast as elicited should be sent forth in a constant stream upon the public mind, through all the channels by which that mind is reached. It is by having heard from day to day, and (with the present generation it has been) from youth to manhood, the vulgar contumely and indignities cast upon men of color, that the public mind has become perverted, and their name connected with injurious associations. And it is only by a *counter* effort, by an exhibition of the opposite side of the picture—by a diligent presentation of truth—by frequent references to services past, and to evidences of merit existing at present; and, generally, to be found wherever men of color are found, that this perversion of the public sentiment can be corrected. It is thus the name of color may be rescued from associations which now attach to it, and connect itself with what is noble in character, and generous in virtue.

People of color are too often pre-judged by those unhappy specimens of humanity which are sometimes seen, and from which no people, whatever their color, are exempt. This is unjust, and the more so as their peculiar circumstances render them liable to this treatment. Excluded as they are from the common intercourse of society, their progress in refinement, social improvements, domestic comforts, the moral worth and influence of many in the circle in which they move, pass unobserved—and their true merits become but little known. Their worth, therefore, moral and social, should be drawn from its obscurity—the curtain should occasionally be lifted, that the world may see how false and unjust are the common imputations thrown upon them; and if in every community some individual would interest himself to gather up the facts of this kind which his neighborhood furnishes, and send them forth to the world, there would soon be found afloat in the public mind, an array of proofs, under whose influence prejudice would gradually subside.

Prejudice against Color.

It is an object of this book to exert an influence, tending to the repeal of laws recognising destinctions of color. Such laws are the results of prejudice—hatred of men for the complexion it has pleased their Maker to give them. And to remove these out of the way, it is necessary to undermine the basis upon which they rest. Every successful attempt to destroy the objections of prejudice, is a step towards the accomplishment of the object. And prejudice against color, let it be understood, is the battle ground between the friends and foes of human rights in a contest for equal laws; especially in the free States, where a question of property does not embarrass the subject. Every legal disability—the exclusion of colored men from militia service, from naturalization, or the basis of representation; denying them the rights of citizenship or suffrage, or the benefit of the public schools; and rendering them incompetent to hold real estate, or to give testimony in court; wherever these exist, they are monuments of the force of prejudice. They all point to the existence of this hateful feeling, from which they originated, which lies back of, and supports them all. They are out-posts on the frontier ground of this disputed

territory, and will remain impregnable while the people bow to this dark power; but as soon as *they* are won from the delusion, these defences will surrender at discretion.

The subjects, with reference to which the selections in the following pages have been made, are three, viz.: The Right of Suffrage, of Citizenship, and Trial by Jury.

1. *The right of suffrage, by citizens of color.*

The notice of this subject is comprised in "Sketches of Proceedings and Speeches in the Convention of New York, held for amending the Constitution of that State, in the year 1821." The order in which the topics involved in the notice of this subject are presented, is the one chosen by the different speakers. This preserves the harmony and continuity of the arguments of each. And this mode of arrangement is according to the design of the work. The leading points which properly belong to a discussion of the subject, are noticed. And it is believed that, with most readers it will have more influence than it would have in any other form, because it expresses the views of some of the most eminent men of the country on the subject, such as Platt, Jay, Van Vetchen, and others, whose arguments are given. By dividing the remarks of gentlemen into suitable paragraphs, and affixing to each a brief designation of the subject, reference from one part of the debate to the other for the purpose of a confirmation or comparison of ideas, is rendered easy. In regard to the original writing and matter introduced, (and this remark applies to the whole work,) it is proper to say, that, with a few exceptions, but little more has been attempted than was necessary to link the facts and arguments together, so as to enable the reader to follow the chain.

2. *Citizenship of persons of color.*

In regard to citizenship, this is a subject of great importance—an exclusion from suffrage is a withholding of political rights only, but the question of citizenship strikes deeper; deny a man this, and his personal rights are not safe. He may be hindred from going into a State—or, if he enters it, he may be expelled, or treated as an alien. On this principle Missouri attempted to prohibit free colored men from coming into, or settling in the State, on any pretext whatever. And Connecticut undertook to deprive those of the benefits of a school, who came for the laudable purpose of education.

The selections made have reference (1) to the general principles of citizenship; and (2) to the two memorable instances in the history of the country in which the question has been raised and discussed, viz. the Missouri question, and the case of Prudence Crandall. This subject was also noticed in the debates in the recent Reform Convention of Philadelphia, on the insertion of the word white in the clause relating to suffrage.

3. *Trial by jury.*

The last subject of this book is trial by jury. It is introduced with a view to consider its application to the case of fugitive slaves, or, as they are stiled, "fugitives from labor." The general agitation of the question in this aspect throughout the country, at this time, in legislative bodies, courts of justice, popular meetings, and through the press, renders any apology as a reason for its introduction here unnecessary. It is a question, whether slavery may yet rear its scaly crest in a free State, bid defiance to the legislature and its laws, even where they attempt no more than to interpose a jury trial to protect the liberties of a citizen. It is a question, whether the law of Congress, of February 12, 1793, relating to fugitives from

labor, is a valid law or not; under which *any free citizen of a State may be seized as a slave*, or apprentice who has escaped from servitude, *and transported to a distant part of the Union without any trial, except a summary examination before a magistrate, who is not even clothed with power to compel the attendance of witnesses.*

NOTICE.

As it has been extensively advertised that the individual who has collected and arranged the materials of this work, designed to publish "An essay on unequal laws, or the legal disabilities to which persons of color are subject in the State of New York," he would avail himself of this opportunity to state why that work has not appeared. The reason is this.—When it was about ready for the press, the author became satisfied that the work would be materially improved if it were remoddled, and the arrangement changed. And this was the view of those to whose judgment he defers.—Further: to remoddle and re-arrange the work, some of it required to be re-written; and as this would have delayed its appearance to too late a period, to give it the circulation which it was desired and necessary it should have, to prepare and excite the people to petition for the removal of such disabilities, *before* the adjournment of the legislature *then* in session—which was a principal object in desiring the publication of the work, at that time—it was thought advisable to defer it; and particularly as thereby opportunities would be given to extend the investigation into the disabilities imposed by the laws of other States, so that, when published, all might appear together. An enlarged work of the kind suggested, is in contemplation. Its final appearance, however, is not certain. It may depend on the reception this attempt meets with.

In the mean time a few hints on the subject may not be amiss.

HINTS OF THE RIGHTS AND DISABILITIES OF PERSONS OF COLOR IN THE STATE OF NEW YORK.

1. In the State of New York persons of color are citizens. Whatever may have been done in other States, in this their citizenship is not denied. (See *Post*, 18 *c.* and pp. 16, 60.) Their personal rights—to life, liberty, and property—their rights of conscience, and to the protection of the law, is the same as that of white citizens. —(See *Post*, p. 36.)

2. They may, legally, be called to serve on juries, (*Rev. Stat., Part* 3, *Chap.* 7, *Tit.* 1, *Art.* 2, *Sec.* 13,) and are equally entitled to the public provisions for education as others.—Their right to the benefits of the school fund* is the same.—(1 *Rev. Stat.*, p. 462, 2d edi., *Secs.* 2 and 3.) And colored inhabitants have an equal right to vote in district school meetings.—(*Com. School Decisions*, p. 318.) So their children have the same right of admission into the common schools.

But the common school superintendent has decided that the trustees of a school district ought not to employ a *colored* teacher for *white* children, yet if they please to do it, it is *not* unlawful.—(*Com. School Decisions*, p. 139.) A case of this kind occurred in the town of Hunter, in Orange county; where the trustees employed a colored teacher, the school was attended almost exclusively by *white* children.

3. They are legally eligible to all civil offices the same as white men. If the people, or the appointing power, choose to put them in office, there is nothing in the constitution to forbid it.—(*Consti. N. Y., Arts.* 3, 4; 1 *Rev. Stat.*, pp. 95 *to* 126.)

* *Note.*—New York school fund amounts to about one million nine hundred thousand dollars.

4. But they are excluded from the right of suffrage, unless they possess a freehold estate of $250 in value.—(*Constitution N. Y., Art.* 2, *Sec.* 1.)

5. Generally, they are excluded from the basis of representation.—(*Constitution N. Y., Art.* 1, *Secs.* 6 and 7.) Those only who pay taxes being included. The effect of the rule is, that nearly 43,000 are excluded, and less than 1000 admitted. But free colored people are admitted in the basis of the national representation—*i. e.* for Congress.—(*Constitution U. S., Art.* 1, *Sec.* 2, *clause* 3.)

6. Colored men are not enrolled in the militia.—(*Act of Congress,* May 8, 1792; 1 *Rev. Stat.*, p. 285.) And unless a person of color owns a freehold of $250 in value, he is not liable to pay taxes.—(*Constitution N. Y., Art.* 2, *Sec.* 1.)

7. The right of persons claimed as fugitives from labor, to a trial by jury, has been recognised by a law of the legislature; but it is a disputed question, whether the law is constitutional.—(See *Post*, pp. 86, 7, 8; 14 *Wend. Rep.*, 524; 12 *Ib.* 311. *Rev. Stat.*, *Part* 3, *Chap.* 9, *Tit.* 1, *Art.* 1.)

8. Colored *aliens*, cannot be naturalized. The law of Congress makes no provision for them, (*Act of April* 14, 1802), and by a law of New York, they cannot hold real estate.—(1 *Rev. Stat.*, p. 720.) But it is common to enact special statutes to enable them to do it.

Slavery in New York—its abolition and relics.

9. By the law of 1817, every negro, mulatto, or mustee, within the State, *born before* the 4th of July, 1799, became free, *after* the 4th of July, 1827.—(*Laws N. Y.*, 1817, p. 144, *Sec.* 32.)

10. Every person born of a slave mother, between July 4, 1799, and March 31st, 1817, within the State of New York, became free by the law of '99, (*Sess. Laws*, 99, p. 72,) but was to continue the servant of the owner of the mother the same as if bound to service by the overseers of the poor; if a male, till twenty-eight, and if a female, till twenty-five years of age. Under this clause this species of service may not cease till 1845.

11. Every person born of a slave mother, within the State of New York, between March 31st, 1817, and July 4th, 1827, was declared free, but was to continue a servant of the owner of the mother, as if bound to service, till he or she arrived at the age of twenty-one years.—(2 *Rev. Stat.*, pp. 88, 89, *Secs.* 15, 16.) This species of service may not cease till 1848.*

12. Persons born since July 4th, 1799, and before July 4th, 1827, and brought into the State of New York *as slaves* by inhabitants of other States, removing into the State with an intention to reside permanently, are declared free; but remain liable to service, as if bound to service, if a male till twenty-eight years of age, and if a female, till twenty-five years of age. This species of service may be protracted till the year 1855.† But persons of this description, if brought into the State of

* *Note.*—A *condition* of the master's title to service in these cases is, "That in one year after the birth of the child he shall cause to be filed with the clerk of the city or town, of which he is an inhabitant an affidavit in writing, containing the name, age, and sex of the child so born; and shall cause the child to be taught to read and to write, or have at least two years schooling. If these conditions are neglected, the child is entitled to a release from all obligations of service at eighteen years of age.—(2 *Rev. Stat.* 89, *Secs.* 17, 18.)

† *Note.*—If the person bound to serve under this provision were brought into the State *before* the 31st of March, 1817, a *condition* upon which the master's title to the service depends, is, "That within six months after he arrives in the State he file with the clerk of the city or town in which he then resided his affidavit, containing his name and addition, and the name, age, and sex of the person whose service is claimed; and that he or his personal representatives shall have used all reasonable means to teach such person to read, and shall also have furnished him with at least one year's schooling. If these terms are not complied with, the person is entitled to freedom at eighteen years of age.—(2 *Rev. Stat.* 89, *Secs.* 21, 22.) But if the person were brought into the State *after* the 31st of March, 1817, the title of the master to the service of the person is upon

New York, *since* January 1, 1830, are to serve only till they are twenty-one years of age (1 *Rev. Stat.* 662, *Secs.* 3, 4, 5; 2 *Rev. Stat.* 89, *Sec.* 20.)

13. Every person born in the State of New York, whether white or colored, *is* FREE, and every person who shall hereafter be born within the State SHALL BE FREE. And every person brought into the State, shall be free also.—(1 *Rev. Stat.* 662, *Sec.* 16, *Chap.* 20, *Title* 7, *Part* 1.) But this last clause does not discharge a fugitive from service *who has escaped* from another State into New York—nor does it apply to the case above described, of persons removing from other States into New York to reside permanently, who bring their slaves with them—nor to any person *not* an inhabitant of New York, who is travelling to, or from, or through that State; but such person is permitted to bring his slaves with him, and take them away again. In the last case, however, the slaves are forbid to reside or be kept in the State over nine months; if they are, the law declares them free. Persons, also, who, or whose family reside part of the year in the State of New York, and part in another State, may bring their slaves with them [into New York] and take them away again.—(1 *Rev. Stat.* 662, *Secs.* 1 *to* 7.)

the condition that he file with the clerk of the city or town in which he shall come to reside, within six months after he comes into the State, his own affidavit in writing, containing his name and addition, and the county and State from which he removed, and the time of his arrival in this State, together with the name, age, and sex of the person so held. The affidavit to be recorded by the clerk with whom it is filed, and a certified copy to be good evidence of the facts.—(1 *Rev. Stat.* 662, *Sec.* 3.)

The following is THE SERVANT'S LEGAL REMEDY, in cases of cruelty or misusage by the master, or a violation of the condition of service on his part.

If any master be guilty of any cruelty, misusage, refusal of necessary provisions or clothing, or any *other violation* of the provisions of this title, (*Title* 7, *Part* 2, *Chap.* 8, *Rev. Stat.*,) or of the terms of the indenture or contract, towards any such person bound to service, such person may complain to any two justices of the peace of the county, or to the mayor, recorder, or alderman, of any city, or any two of them who shall summon the parties before them, and examine into, hear, and determine the complaint, and may by certificate under their hands discharge such person from his obligations of service.—(2 *Rev. Stat.* 91, *Sec.* 32.)

SKETCHES

OF

PROCEEDINGS AND SPEECHES

RELATING TO THE RIGHT OF SUFFRAGE

BY CITIZENS OF COLOR,

IN THE CONVENTION OF NEW YORK, HELD FOR AMENDING THE CONSTITUTION OF THAT STATE,

IN THE YEAR 1821.

The subject of Suffrage was referred to the following committee, viz: Nathan Sanford, (late chancellor of the State,) James Fairlie, Gen. Stephen Van Rensselaer, Peter R. Livingston, Samuel Young, John Cramer, and John Z. Ross, to consider and report thereon.

The committee in their report, proposed to exclude citizens of color from the right of suffrage,* by inserting the word "*white,*" in the clause relating to that subject, viz:

"*That every* WHITE *male citizen, of the age of twenty-one years, &c., should (on certain conditions specified) be entitled to vote.*"

The Convention being in committee of the whole, on the report—

Nathan Sanford, chairman, took the floor. He made an elaborate exposition of the principles necessary to be considered in adjusting so important a subject as that of suffrage, and fixing the qualifications of voters. Here there is, said he, but *one* estate—the people. And, to me, the only qualification seems to be, their virtue and morality. If they may be safely trusted to vote for one class of rulers, why not for all? The principle of the scheme now presented, is, that those who bear the burdens of the State shall choose those that rule it; and we wish to carry it almost as far as our male population. It is the scheme which has been proposed by a majority of the committee, and they think it safe and beneficial.

The honorable chairman said nothing of the bearing of the scheme

* *Note.*—Under the old constitution, they had enjoyed the right of suffrage for forty-five years, equally with white citizens, and on the *same* terms.

on the rights and interests of citizens of color. On this subject he was silent.*

The task of assigning reasons for the innovation proposed in this respect, fell to *John Z. Ross*, of Genesee. In performing it, he remarked:

"That the proposition, that all men are free and equal, according to the usual declarations, applies to them only in a state of nature, and not after the institution of civil government; for then many rights, flowing from a natural equality, are necessarily abridged, with a view to produce the greatest amount of security and happiness to the whole community. On this principle the right of suffrage is extended to *white* men only. But why, it will probably be asked, are blacks to be excluded? I answer, because they are seldom, if ever, required to share in the common burdens or defence of the State. There are also additional reasons; they are a *peculiar* people, incapable, in my judgment, of exercising that privilege with any sort of discretion, prudence, or independence. They have no just conceptions of civil liberty. They know not how to appreciate it, and are consequently indifferent to its preservation. It is not thought advisable to permit aliens to vote: neither would it be safe to extend it to blacks. * * * * In nearly all the Western and Southern States, indeed many others, even in Connecticut, where steady habits and correct principles prevail, the blacks are excluded. * * * * I fear that an extension to the blacks would serve to invite that kind of population to this State. * * * * * Next, the blacks will claim to be represented by persons of their own color, and can you consistently refuse them? On the whole, sir, let your constitution, at a proper period, declare their emancipation. Exempt them from military service, as the United States government directs, and from other burdens as heretofore; give them the full benefit of protection; and then, in mercy to themselves and to us, let us stay our hands.

Debates N. Y. Convention, pp. 180, 1.—*Stone & Carter's Ed.*

Hereupon a discussion ensued upon the question of *continuing* or *striking out* the word "*white*" from the rule proposed.

PETER A. JAY'S SPEECH.

(*a*) *Mr. Jay.*† The chairman of the select committee has given a fair and candid exposition of the reasons that induced them to make the report now under consideration, and of the motives by which they were governed. He has clearly stated why they were desirous of

* On a motion afterwards made by P. A. Jay, and supported by Chan. Kent, to *strike out* the word "*white*" from the limitation, Mr. Sanford (and also two other members of the committee, Gen. Stephen Van Rensselaer and John Cramer) voted *for* the striking out. This is, doubtless, the reason of his silence on that feature of the report when addressing the committee. He was opposed to it.

† P. A. Jay, then from West Chester, now of the city of New York.

extending the right of suffrage to some who did not at present enjoy it, but he has wholly omitted to explain why they deny it to others who actually possess it. The omission, however, has been supplied by one of his colleagues, who informed us that all who were *not white* ought to be excluded from political rights, because such persons were incapable of exercising them discreetly, and because they were peculiarly liable to be influenced and corrupted. These reasons, sir, I shall notice presently.

[*The exclusion uncalled for.*]

(*b*) When this convention was first assembled, it was generally understood that provisions would be made to extend the right of suffrage, and some were apprehensive that it might be extended to a degree which they could not approve. But, sir, it was not expected that this right was in any instance to be restricted, much less was it anticipated, or desired, that a single person was to be disfranchised. Why, sir, are these men to be excluded from rights which they possess in common with their countrymen? What crime have they committed for which they are to be punished? Why are they, who were born as free as ourselves, natives of the same country, and deriving from nature and our political institutions the same rights and privileges which we have, now to be deprived of all those rights, and doomed to remain for ever as aliens among us? We are told, in reply, that other States have set us the example. It is true that other States treat this race of men with cruelty and injustice, and that we have hitherto manifested towards them a disposition to be just and liberal. Yet even in Virginia and North Carolina, free people of color are permitted to vote, and if I am correctly informed, exercise that privilege. In Pennsylvania, they are much more numerous than they are here, and there they are not disfranchised,* nor has any inconvenience been felt from extending to all men the rights which ought to be common to all. In Connecticut, it is true, they have, for the last three years, adopted a new constitution, which prevents people of color from acquiring the right of suffrage, in future; yet even there they have preserved the right to all those who previously possessed it.

* * * * * * *

[*Objection on the ground of incapacity answered.*]

(*c*) But we are told by one of the select committee, that people of color are incapable of exercising the right of suffrage. I may have misunderstood that gentleman; but I thought he meant to say, that they labored under a physical disability. It is true that some philosophers have held, that the intellect of a black man is naturally inferior to that of a white one; but this idea has been so completely refuted, and is now so universally exploded, that I did not expect to have heard of it in an assembly so enlightened as this, nor do I now think it necessary to disprove it. That, in general, the people of color are inferior to the whites in knowledge and in industry, I shall not deny. You made them slaves, and nothing is more true than the ancient

**Note.*—By a recent vote in the Convention of Pennsylvania, (January 27, 1838,) citizens of color were excluded from the right of suffrage in that State. Whether that act will be sanctioned by the people, remains to be seen.

saying, "The day you make a man a slave takes half his worth away." Unaccustomed to provide for themselves, and habituated to regard labor as an evil, it is no wonder that, when set free, they should be improvident and idle, and that their children should be brought up without education, and without prudence or forethought. But will you punish the children for your own crimes; for the injuries which you have inflicted upon their parents? Besides, sir, this state of things is fast passing away. Schools have been opened for them, and it will, I am sure, give pleasure to this committee to know, that in these schools there is discovered a thirst for instruction, and a progress in learning, seldom to be seen in the other schools of the State. They have also churches of their own, and clergymen of their own color, who conduct their public worship with perfect decency and order, and not without ability.

[*Exclusion will excite the scorn of the South.*]

(*d*) This State, Mr. Chairman, has taken high ground against slavery, and all its degrading consequences and accompaniments. There are gentlemen on this floor, who, to their immortal honor, have defended the cause of this oppressed people in Congress, and I trust they will not now desert them. Adopt the amendment now proposed, and you will hear a shout of triumph, and a hiss of scorn, from the southern part of the Union, which, I confess, will mortify me—I shall shrink at the sound, because I fear it will be deserved.

[*Exclusion unnecessary.*]

(*e*) But it has been said that this measure is necessary to preserve the purity of your elections. I do not deny that necessity has no law, and that self-preservation may justify in States, as well as in individuals, an infringement of the rights of others. * * * * . But where is the necessity in the present instance? The whole number of colored people in the State, whether free or in bondage, amounts to less than a fortieth part of the whole population. When your numbers are to theirs as forty to one, do you still fear them? To assert this, would be to pay them a compliment which, I am sure, you do not think they deserve. But there are a greater number in the city of New York. How many? Sir, even in that city, the whites are to the blacks as ten to one. And even of the tenth which is composed of the black population, how few are there that are entitled to vote? It has also been said that their numbers are rapidly increasing. The very reverse is the fact. During the last ten years, in which the white population has advanced with astonishing rapidity, the colored population of the State has been stationary. This fact appears from the official returns of the last and the preceding census, and completely refutes the arguments which are founded upon this mis-statement. Will you then, without necessity, and merely to gratify an unreasonable prejudice, stain the constitution you are about to form, with a provision equally odious and unjust, and in direct violation of the principles which you profess, and upon which you intend to form it? I trust, I am sure, you will not.

Debates, N. Y. Convention, pp. 183, 4, 5.

DR. ROBERT CLARKE'S SPEECH.

(*a*) *Mr. R. Clarke** said he rose with considerable embarrassment, knowing the weight of experience, talent, and elocution opposed to him. I am, said Mr. C., opposed to my honorable colleague (Mr. Root) on this question, to whose judgment and experience I have generally been willing to pay due deference. I am unwilling to retain the word "*white*," because its detention is repugnant to all the principles and notions of liberty, to which we have heretofore professed to adhere, and to our declaration of independence, which is a concise and just expose of those principles. In that sacred instrument we have recorded the following incontrovertible truths—"*We hold these truths to be self-evident, that all men are created equal: that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.*"

[*Exclusion unjust.*]

(*b*) The people of color are capable of giving their consent, and ever since the formation of your government they have constituted a portion of the people, from whence your legislators have derived "their just powers;" and by retaining that word, you deprive a large and respectable number of the people of this State of privileges and rights which they have enjoyed in common with us, ever since the existence of our government, and to which they are justly entitled. Sir, to this declaration we all profess to be willing to subscribe, yet by retaining this word you violate one of the most important maxims it contains.

(*c*) It has been appropriately observed by the honorable gentleman from Westchester, (Mr. Jay,) that, by retaining this word, you violate the constitution of the United States. Besides the clause quoted by that honorable gentleman, I think there is another upon which it crowds very hard. Free people of color are included in the number which regulates your representation in Congress, and I wish to know how freemen can be represented when they are deprived of the privilege of voting for representatives. The constitution says, "representatives and direct taxes shall be apportioned among the different States, according to the inhabitants thereof, including all free persons," &c. All colors and complexions are here included. It is not free "*white*" persons. No, sir, our venerable fathers entertained too strong a sense of justice to countenance such an odious distinction.—Now, sir, taking this in connexion with the declaration of independence, I think you cannot exclude them without being guilty of a palpable violation of every principle of justice. We are usurping to ourselves a power which we do not possess; and by so doing, deprive them of a privilege to which they are, and always have been, justly entitled—an invaluable right—a right in which we have prided ourselves as constituting our superiority over every other people on earth—a right which they have

* Dr. Clarke was a delegate from the county of Delaware.

enjoyed ever since the formation of our government—the right of suffrage. And why do we do this? Instead of visiting the iniquities of these people upon them and their children, we are visiting their misfortunes upon them and their posterity unto the latest generation. It was not expected of us, that, in forming a constitution to govern this State, we should so soon have shown a disposition to adopt plans fraught with usurpation and injustice. Because we have done this people injustice, by enslaving them, and rendering them degraded and miserable, is it right that we should go on and continue to deprive them of their most invaluable rights, and visit upon their children to the latest posterity this deprivation? Is this just? Is it honest? Was it expected by our constituents? Will it not fix a foul stain upon the proceedings of this Convention which time will not efface?

[*Exclusion from militia duty, not a good reason.*]

(*d*) My honorable colleague has told us "that these people are not liable to do military duty, and that as they are not required to contribute to the protection or defence of the State, they are not entitled to an equal participation in the privileges of its citizens." But, sir, whose fault is this? Have they ever refused to do military duty when called upon? It is haughtily asked, who will stand in the ranks, shoulder to shoulder, with a negro? I answer, no one in time of peace; no one when your musters and trainings are looked upon as mere pastimes: no one when your militia will shoulder their muskets and march to their trainings with as much unconcern as they would go to a sumptuous entertainment or a splendid ball. But, sir, when the hour of danger approaches, your "white" militia are just as willing that the man of color should be set up as a mark to be shot at by the enemy, as to be set up themselves. In the war of the revolution these people helped to fight your battles by land and by sea. Some of your States were glad to turn out corps of colored men, and to stand "shoulder to shoulder" with them. In your late war they contributed largely towards some of your most splendid victories. On Lakes Erie and Champlain, where your fleets triumphed over a foe superior in numbers, and engines of death, they were manned in a large proportion with men of color. And, in this very house, in the fall of 1814, a bill passed, receiving the approbation of all the branches of your government, authorizing the governor to accept the services of a corps of 2000 free people of color. Sir, these were times which tried men's souls. In these times it was no sporting matter to bear arms. These were times when a man who shouldered his musket, did not know but he bared his bosom to receive a death wound from the enemy ere he laid it aside; and in these times, these people were found as ready and as willing to volunteer in your service as any other. They were not compelled to go, they were not drafted. No, your pride had placed them beyond your compulsory power. But there was no necessity for its exercise; they were volunteers; yes, sir, volunteers to defend that very country from the inroads and ravages of a ruthless and vindictive foe, which had treated them with insult, degradation, and slavery. Volunteers are the best of soldiers; give me the men, whatever be their complexion, that willingly volunteer,

and not those who are compelled to turn out; such men do not fight from necessity, nor from mercenary motives, but from principle. Such men formed the most efficient corps for your country's defence in the late war; and of such consisted the crews of your squadrons on Erie and Champlain, who largely contributed to the safety and peace of your country, and the renown of her arms. Yet, strange to tell, such are the men whom you seek to degrade and oppress.

[*The exclusion will create discontent and jealousy.*]

(*e*) There is another consideration which I think important. Our government is a government of the people, supported and upheld by public sentiment; and to support and perpetuate our free institutions, it is our duty and our interest to attach to it all the different classes of the community. Indeed there should be but one class. Then, sir, is it wise, is it prudent, is it consistent with sound policy, to compel a large portion of your people and their posterity, for ever to become your enemies, and to view you and your political institutions with distrust, jealousy, and hatred, to the latest posterity; to alienate one portion of the community from the rest, and from their own political institutions? I grant you, sir, that in times of profound peace, their numbers are so small that their resentment could make no serious impression. But, sir, are we sure, can we calculate that we are always to remain in a state of peace? that our tranquillity is never again to be disturbed by invasion or insurrection? And, sir, when that unhappy period arrives, if they, justly incensed by the accumulated wrongs which you heap upon them, should throw their weight in the scale of your enemies, it might, and most assuredly would, be severely felt. Then your gayest and proudest militiamen that now stand in your ranks, would rather be seen "shoulder to shoulder" with a negro, than have him added to the number of his enemies, and meet him in the field of battle.

[*Impracticability of retaining the word white.*]

(*f*) By retaining the word "white," you impose a distinction impracticable in its operation. Among those who are, by way of distinction, called whites, and whose legitimate ancestors, as far as we can trace them, have never been slaves, there are many shades of difference in complexion. Then how will you discriminate? and at what point will you limit your distinction? Will you here descend to particulars, or leave that to the legislature? If you leave it to them, you will impose upon them a burden which neither you nor they can bear. You ought not to require of them impossibilities. Men descended from African ancestors, but who have been pretty well whitewashed by their commingling with your white population, may escape your scrutiny; while others, whose blood is as pure from any African taint as any member of this Convention, may be called upon to prove his pedigree, or forfeit his right of suffrage, because he happens to have a swarthy complexion. Are you willing, by any act of this Convention, to expose any, even the meanest, of your white citizens, to such an insult? I hope not.

[*Objections, as to moral disqualifications, answered.*]

(*g*) But it is said these people are incapable of exercising the right of suffrage judiciously: that they will become the tools and engines of aristocracy, and set themselves up in market, and give their votes to the highest bidder; that they have no will or judgment of their own, but will follow implicitly the dictates of the purse-proud aristocrats of the day, on whom they depend for bread. This may be true to a certain extent: but, sir, they are not the only ones who abuse this privilege; and if this be a sufficient reason for depriving any of your citizens of their just rights, go on and exclude also the many thousands of white, fawning, cringing sycophants, who look up to their more wealthy and more ambitious neighbors for direction at the polls, as they look to them for bread. But although most of this unfortunate class of men may, at present, be in this dependent state, both in body and mind, yet we ought to remember, that we are making our constitution, not for a day, nor a year, but I hope for many generations; and there is a redeeming spirit in liberty, which I have no doubt will eventually raise these poor, abused, unfortunate people, from their present state, to equal intelligence with their more fortunate and enlightened neighbors.

[*Effects of the exclusion.*]

(*h*) Sir, there is a day now fixed by law, when slavery must for ever cease in this State. Have gentlemen seriously reflected upon the consequences which may result from this event, when they are about to deprive them of every inducement to become respectable members of society, turning them out from the protection, and beyond the control of their masters, and in the mean time ordaining them to be fugitives, vagabonds, and outcasts from society?

(*i*) Sir, I well know that this subject is attended with embarrassment and difficulty, in whatever way it may be presented. We have this population here without any fault of theirs. They were brought here and enslaved by the arm of violence and oppression. We have heaped upon them every indignity, every injustice; and in restoring them at this late day (as far as is practicable) to their natural rights and privileges, we make but a very partial atonement for the many wrongs which we have heaped upon them; and in the solemn work before us, as far as it related to these people, I would do them justice, and leave the consequences to the righteous disposal of an all-wise and merciful Providence.

(*j*) The honorable gentleman from Genesee (Mr. Ross) has said that they were a *peculiar* people. We were told the other day that the people of Connecticut were a *peculiar* people. Indeed, this is a *peculiarly* happy mode of evading the force of an argument. I admit that the blacks are a *peculiarly* unfortunate people, and I wish that such inducements may be held out, as shall induce them to become a sober and industrious class of the community, and raise them to the high standard of independent electors.

Debates, N. Y. Convention, pp. 186, 7, 8, 9.

REMARKS BY CHANCELLOR KENT.

[*Convention not called to disfranchise any one.*]

(*a*) *Mr. Kent** supported the motion of Mr. Jay to *strike out* the word "*white.*" We did not come to this Convention, said he, to disfranchise any portion of the community, or to take away their rights.

[*Use of the word* "WHITE" *leads to difficulty.*]

(*b*) There was much difficulty in the practical operation of the principle involved in the use of the word *white.* What shall be the criterion in deciding upon the different shades of color. The Hindoo and Chinese are called yellow—the Indian red—shall these be excluded, should they come and reside among us? Great efforts were now making in the Christian world to enlighten and improve their condition, and he thought it inexpedient to erect a barrier that should exclude them for ever from the enjoyment of this important right.

He was disposed, however, to annex such qualifications and conditions as should prevent them from coming in bodies from other States to vote at elections.

Debates, N. Y. Convention, pp. 190, 191.

SPEECH OF ABRAHAM VAN VECHTEN.

[*People looked for an extension of rights, not an abridgement.*]

(*a*) *Mr. Van Vechten** observed, that the question before the committee was of importance, and on which he should be happy to see a unanimous vote. It had been said that the people looked for an extension of the right of suffrage, but he had not heard it suggested that they desired the disfranchisement of any class of electors. The amendment reported by the select committee contemplated to deprive electors of color of a right which they have enjoyed since the adoption of the constitution. He asked why this should be done? Those electors are freemen, and have been recognised as citizens of the State nearly half a century; have, under the sanction of our constitution and laws, duly acquired the legal qualifications of electors. Have they done any thing to forfeit their right of suffrage? This has not been shown.

[*Reply to the charge of degradation.*]

(*b*) It was indeed urged that they are a degraded people, wanting intelligence, integrity, and independence, who sell their votes to the highest bidder, and that many commit perjury to make themselves voters. But what evidence have the committee to fix those imputations on that class of electors, which does not fix the same imputation on as numerous a class of white electors? Is perjury, moral degradation, ignorance, and want of independence, confined to the electors of color? Have they the capacity to acquire and take care of the property which is necessary to constitute them electors, and are they incapable of en-

* Delegate from the city of Albany.

joying the privileges which the acquisition of property entitles them to? Is it competent for us to prescribe what moral and intellectual qualifications will constitute an honest and independent elector? I presume not, (said Mr. Van Vechten,) nor has the select committee attempted to do so, except by excluding persons duly convicted of infamous crimes.

[*Colored people citizens.*]

(*c*) It seems that some gentlemen entertain doubts whether any of our people of color are in a legal sense citizens, but those doubts were in his opinion unfounded.—We are precluded from denying their citizenship, by our uniform recognition for more than forty years—nay some of them were citizens when this State came into political existence—partook in our struggle for freedom and independence, and were incorporated into the body politic at its creation. As to their degradation, that had been produced by the injustice of white men, and it does not become those who have acted so unjustly towards them, to urge the result of that injustice as a reason for perpetuating their degradation.—The period has elapsed when they were considered and treated as the lawful property of their masters. Our legislature has duly recognised their unalienable right to freedom as rational and accountable beings. This recognition, and the provision made by law for the gradual amelioration of their condition, by necessary implication, admit their title to the native and acquired rights of citizenship. Indeed the report of the select committee considers them to be citizens—why else are the words *white citizens* used in the report? If there are no citizens of color, the term *white*, by way of distinction, is unmeaning. Again, the law under which the members of this Convention were elected, expressly gives them the right of voting, not only for calling the Convention, and at the election of its members, but on the amendments which the Convention may propose to the constitution. Are not these unequivocal and conclusive concessions of their citizenship?

[*Exemption from militia, no reason for exclusion.*]

(*d*) But it is said that they are by law exempted from sharing the public burdens of militia service, and serving as jurors, because public sentiment is against an intermixture with them in those services. Mr. Van Vechten remarked that their exemption from militia duty was the gratuitous act of the government of the United States, in which the free people of color were not consulted. With respect to serving on juries, there is no legal exemption in favor of the people of color who have the qualifications prescribed by law for jurors. It is true that in compliance with the prejudices of the community they are practically excluded from jury service, and probably their exemption from militia duty was induced by the same motive. But is this a just ground for disfranchising them? Are they not liable, whenever the government shall see fit to require them, to render the same services that white citizens are enjoined to perform? Are they not taxable, and do not many of them pay their proportion of taxes in common with white citizens? This cannot be denied. How then can we, in

framing a permanent form of government, justly deny them the rights of free citizens, on account of their present exemption by law from militia duty, and their practical exemption from serving as jurors?

[*Objection, founded on prejudice, answered.*]

(*e*) Do our prejudices against their color destroy their rights as citizens? Whence do those prejudices proceed? Are they founded in impartial reason, or in the benevolent principles of our holy religion? Nay, are they indulged in cases where the services of men of color are desirable? Do we not daily see them working side by side with white citizens on our farms, and on our public highways? Is it more derogatory to a white citizen to stand by the side of a citizen of color in the ranks of the militia, than in repairing a highway, or in laboring on a farm? Again, are not people of color permitted to participate in our most solemn religious exercises—to sit down with us at the same table to commemorate the dying love of the Saviour of sinners? This will not be denied by any one who has been in the habit of attending those exercises, and those religious solemnities. And what is the conclusion to which this fact directs us? Is it not that people of color are our fellow candidates for immortality, and that the same path of future happiness is appointed for them and us—and that in the final judgment the artificial distinction of color will not be regarded?—How then can that distinction justify us in taking from them any of the common rights which every other free citizen enjoys? * * * * * *

[*Exclusion may contravene United States Constitution.*]

There is another, and to my mind, an insuperable objection, said Mr. V. V., to the exclusion of free citizens of color from the right of suffrage, arising from the provision in the constitution of the United States, "that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." The effect of this provision is, to secure to the citizens of the other States, when they come to reside here, equal privileges and immunities with our native citizens. Suppose, then, that a free citizen of color should remove from the State of Connecticut into this State, could we deny him the right of suffrage when he obtained the legal qualification of an elector? Is not the constitution of the United States paramount to ours on the subject? and if it is, will it be wise or fit to incorporate an amendment in our constitution, by which we deny to our own citizens of color a privilege which we cannot withhold from the same description of citizens of other States, when they migrate into this State.

[*The exclusion in Connecticut.*]

(*f*) It has been stated by the gentleman from Saratoga, (Mr. Young,) that by the constitution of Connecticut, which has been recently adopted, the right of suffrage is confined to white male citizens. But on looking into the constitution it will be seen that the first section relative to the qualifications of electors, expressly saves and confirms the right of suffrage to all who had been or should be made

freemen of that State before the ratification of the constitution. It will not be denied that citizenship was necessary to enable any person to become a freeman in Connecticut, nor can it be disputed that there are and have long been freemen of color in that State. We have, therefore, the authority of the framers of the constitution of Connecticut against the principle of disfranchising our present electors of color.

(*g*) Mr. V. V. concluded by repeating that he had understood that it was expected by a considerable portion of the people of this State, that the right of suffrage would be extended, but he had not heard that it was expected or desired (except by some of the citizens of New York) that any of the present electors of this State should be disfranchised. He should, therefore, vote for striking out the word *white* in the amendment before the committee, in order to reserve inviolate the present constitutional rights of the electors.

Debates, N. Y. Convention, pp. 193, t. 5.

PETER A. JAY'S SECOND SPEECH.

(*a*) *Mr. P. A. Jay.* Mr. Chairman, I am sensible that little remains to be gleaned, in a field which has been so well reaped. Still, there are some arguments which deserve a reply, and some points which have been discussed, upon which a few rays of light may, perhaps, yet be thrown.

[*The disabilities of the clergy considered.*]

It has been repeatedly urged, that since the whole body of the clergy have, from reasons of political convenience, been disfranchised, we may, with equal justice, and the same reasons, disfranchise the people of color. But is it true that the clergy are disfranchised? or that their case is similar to that of the people whose rights we are now considering? The clergy have a right to vote, and do vote; they have a right to be represented, and they are represented. The only restriction put upon them is, that while they exercise the pastoral office, they shall exercise no other. If this be disfranchisement, the chancellor and chief justice of the State are equally disfranchised. Neither of those high officers can be a representative in the legislature, unless he resigns his judicial office. But if he resigns it, he immediately becomes eligible; so a clergyman, while he exercises his pastoral office, may not be elected, but if he resigns that office, and ceases to be a minister of the gospel, he may, for any thing that I know to the contrary, accept any other appointment which the people shall please to bestow upon him. History proves, that the interference of the clergy in secular concerns, has usually been prejudicial to the public; that when they mingled in the heat and asperities of political parties, they impaired their own dignity and usefulness, and occasioned dissensions and distrusts among the flocks committed to their charge. The Convention, therefore, which framed our constitution, thought it wise to set them apart, and to confine them to the high and honorable office of instructing the people in their most important duties, and to exempt them from all those offices which would expose them to the

rancor of political contests. But what analogy is there between these provisions, and that by which all people of a certain complexion are to be excluded from the right of suffrage? A clergyman has that right; a black man is to be excluded from it. A clergyman may not be elected, a black man may be. The disability of the clergyman is annexed to the clerical character, and ceases with it; the disability of the black man is to be annexed to his blood, is never to be removed, and is to be inseparable from him and his posterity to the latest generation.

[*The civil rights of Indians considered.*]

(*b*) Again, it has been urged that the case of the people of color is similar to that of the Indians. This also is a mistake. The Indian tribes are considered by us as independent nations. We send to them ambassadors, we receive ambassadors from them, and make treaties with them. They are aliens to us, and we to them.

Under these circumstances, they are no more entitled to vote at our elections, than Englishmen, Frenchmen, or other foreigners. But should an Indian forsake his tribe, and settle in the county of Dutchess, his child, born there, would be as much a citizen as either of the members from that county, and as much entitled to a vote.

[*The power of the Convention to take away rights, denied.*]

(*c*) Another argument, sir, has been strongly pressed by the gentleman from whom I have the misfortune to differ upon this occasion. It is insisted, that this Convention, clothed with all the powers of the sovereign people of the State, have a right to construct the government in the manner they think most conducive to the general good. If, sir, right and power be equivalent terms, then I am far from disputing the rights of this assembly. We have power, sir, I acknowledge, not only to disfranchise every black family, but as many white families also as we may think expedient. We may place the whole government in the hands of a few, and thus construct an aristocracy; nay, I do not perceive why the reasons of some gentlemen would not prove, that we have power to confine the government to a single family, and then a monarchy might be the result. But, sir, right and power are not convertible terms. No man, no body of men, however powerful, have a right to do wrong. And if it be unjust to exclude from all participation in the government of their country, those who are the free born natives of its soil, and who possess all the qualifications required from others to whom we secure the right of suffrage, merely because their complexion displeases us, then, whatever be our powers, we have no right to commit this injustice.

[*Caste and legitimacy both odious.*]

(*d*) Mr. Chairman, we have often heard the term legitimate, and we have been taught to abhor it. What is the meaning of this term? It means, in the language of courts, that by the ancient constitutions of certain countries, all power is vested in a few families, some royal, others noble, and that none other have a right to interfere in the government. We consider this doctrine at once odious and absurd,

and we call upon the citizens of those countries to resist it even unto blood. And yet, sir, we now sit here debating whether we shall confine the government of this State to certain families, and whether all the other families in the State shall not be for ever excluded from any share of it. To this my opponents answer, that the safety of the people is the supreme law, and that the moral condition of the people of color renders their exclusion an act of duty: and a gentleman opposite has asked me, whether, notwithstanding my abhorrence of slavery, I would advise the State of South Carolina, or of Georgia, to adopt the measures of an immediate emancipation. I had already given a distinct answer to this question, in the observations which I first addressed to the committee on this subject. I admitted that great and imperious public necessity would justify a sacrifice of private right to the public good. But, sir, I appeal to the candor of the gentlemen themselves, whether they have made out a case of such necessity. It had not been, nor could it be, asserted, that the votes of the colored population have ever occasioned the smallest inconvenience, or the slightest discontent, in a single county of the State, except New York. And it appears that even in that city, the number of those votes at the last contested election were less than two hundred; and is it possible that you will violate a single principle of justice, or of equal liberty, in order to obviate the inconvenience of this contemptible number of votes?

[*Southern States.*]

(*e*) I am told, sir, that the Southern States are about to emancipate their slaves, and that we shall then be overrun by an emigration of free blacks from those parts of the Union. Happy should I be, sir, if this intelligence were confirmed. But where is the evidence of this approaching emancipation? I have heard, indeed, that the southern planters were adopting measures to rivet more firmly the fetters of slavery, but never that they were beginning to break them. I have heard of laws that forbade the minister of the gospel to proclaim them the glad tidings of salvation. I have heard of laws to prohibit any man from imparting to them a knowledge of letters, and of the first rudiments of literature. I have heard of laws which prohibited manumission. But I have not heard of a single measure which tended to prepare them for the enjoyment of freedom, or which indicated an intention of granting it.

[*Arguments founded on prejudice, answered.*]

(*f*) I have yet, sir, to notice the arguments of the gentleman from Saratoga, (Colonel Young,) these were avowedly addressed, not to our reason, but to our prejudices, and so forcibly have they been urged, that I feel persuaded that they have had more influence on the committee, than all that has been said beside on this occasion. Though repeated in various forms, they may all be summed up in this: that we are accustomed to look upon black men with contempt—that we will not eat with them—that we will not sit with them—that we will not serve with them in the militia, or on juries, nor in any manner associate with them—and thence it is concluded, that they ought not to vote

with us. How, sir, can that argument be answered by reason, which does not profess to be founded on reason? Why do we feel reluctant to associate with a black man? There is no such reluctance in Europe, nor in any country in which slavery is unknown. It arises from an association of ideas. Slavery, and a black skin, always present themselves together to our minds. But with the diminution of slavery, the prejudice has already diminished; and, when slavery shall no longer be known among us, it will perhaps disappear. But, sir, what sort of argument is this? I will not eat with you, nor associate with you, because you are black; therefore, I will disfranchise you. I despise you, not because you are vicious, but merely because I have an insuperable prejudice against you; therefore, I will condemn you, and your innocent posterity, to live for ever as aliens in your native land. Mr. Chairman, I do trust, that this committee will not consent to violate all those principles upon which our free institutions are founded, or to contradict all the professions which we so profusely make, concerning the natural equality of all men, merely to gratify odious, and I hope, temporary prejudices. Nor will they endeavor to remove a slight inconvenience, by so perilous a remedy as the establishment of a large, a perpetual, a degraded, and a discontented *caste*, in the midst of our population.

Debates, N. Y. Convention, pp. 199, 200, 201.

After Mr. Jay sat down, the question on *striking out* the word WHITE was taken by *ayes* and *noes*, and decided IN FAVOR OF STRIKING IT OUT by a vote of 63 to 59.

The following are the *ayes* and *noes*:—

AYES.—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Brinkerhoff, Brooks, Buel, Burroughs, Carver, R. Clarke, Collins, Cramer, Day, Dodge, Duer, Eastwood, Edwards, Ferris, Fish, Hallock, Hees, Hogeboom, Hunting, Huntington, Jay, Jones, Kent, King, Moore, Munro, Nelson, Park, Paulding, Pitcher, Platt, Reeve, Rhinelander, Richards, Rogers, Rosebrugh, Sanders, N. Sanford, Seamen, Steele, D. Southerland, Swift, Sylvester, Tallmadge, Tuttle, Van Buren,* Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Ward, A. Webster, Wendover, Wheaton, E. Williams, Woodward, Wooster, Yates—63.

NOES.—Messrs. Bowman, Breese, Briggs, Carpenter, Case, Child, D. Clark, Clyde, Dubois, Dyckman, Fairlie, Fenton, Frost, Howe, Humphrey, Hunt, Hunter, Hurd, Knowles, Lansing, Lawrence, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Pike, Porter, Price, Pumpelly, Radcliff, Rockwell, Root, Rose, Ross, Russell, Sage, R. Sandford, Schenck, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Spencer, Starkweather, I. Sutherland, Taylor, Ten Eyck, Townley, Townsend, Tripp, Van Fleet, Van Horne, Verbryck, E. Webster, Wheeler, Woods, Young—59.

Debates, N. Y. Convention, p. 202.

So the word *white* was stricken from the limitation.

The next step to be noticed in the doings of the Convention, on this subject, is the following:—After the discussion had been continued for several days on other points involved in an adjustment of the matter, and various propositions and motions had been made in committee of the whole, a vote was passed to discharge the committee

* *Note.*—Now President of the United States.

from the further consideration of the subject, and to refer it to a *select* committee of thirteen, who should take the various plans which had been submitted, and from them all prepare and report such a rule on the subject as would be acceptable to the Convention.

The motion for this reference was made by *Ogden Edwards* of New York. It was resisted by Colonel Young, who wished to have the matter referred back to the committee who first reported on the subject, of which *he* was a member, and a majority of whom were for a total exclusion. The Convention, however, preferred to pass Mr. Edwards' resolution. But mark! when the committee contemplated by the resolution were appointed, Mr. YOUNG, the most unrelenting opponent of the people of color, was placed at its head, and Mr. Edwards, (who having made the motion for the committee, according to parliamentary usages, it is believed, was entitled to the place of chairman,) was not put on the committee at all, and out of the thirteen members of which it was composed, NINE were taken from the *minority* of fifty-nine who voted *against* the people of color on the vote above given, and ONLY FOUR from the *majority* of sixty-three who voted *in their favor.**

FREEHOLD QUALIFICATION.

The select committee of thirteen reported a plan, with a *proviso* relating to citizens of color, containing THE FREEHOLD QUALIFICATION, which is now attached to the exercise of the right of voting by them, and by which all who are not entitled to vote are exempt from direct taxation.

REMARKS BY JUDGE BACON.

[*The proviso deceitful.*]

(*a*) *Mr. Bacon*† said that he objected to this mode of excluding the black population from voting, because, in the first place, it was an attempt to do a thing indirectly which we appeared either to be ashamed of doing, or for some reason chose not to do directly, a course which he thought every way unworthy of us. This freehold qualification is, as it applies to nearly all the blacks, a practical exclusion, and if this is right, it ought to be done directly. By the adoption of this, too, we involved ourselves in the most obvious inconsistency, declaring thereby, that although property, either real or personal,

* *Note.*—The persons who composed the committee were Messrs. Young, Wheeler, A. Livingston, Bowman, Dubois, Dyckman, R. Smith, and Fenton, of those who had voted hostile to the people of color; and only Messrs. Rogers, Collins, Bacon, and Burroughs, of those who had voted for them.

† *Note.*—Delegate from the county of Oneida.

was no correct test of qualification in the case of a white man, it was a very good one in that of a black one; that although, as gentlemen had maintained, it conferred neither talents, integrity, or independence on the one, it imparted them all to the other. If we were determined to exclude them at all, it would be more correct and honorable to do it directly.

(*b*) In relation to the general question he would take this opportunity, for the first time, to explain, in a few words, his general views. He had as little fondness as any one for either legislating or forming systems of government wholly upon those general, sweeping theories of the universal and inalienable rights of man, of which we have heard so much here,—and whoever attempted to bottom all his measures upon any general theories, without alluding to the practical limitations and exceptions to which they were always subject, showed himself a very crude statesman, and a rash and dangerous legislator.

[*No castes or distinct orders recognised here.*]

(*c*) One of our first general principles is, that we recognise no distinct castes or orders of men, having distinct and fixed personal or political rights,—and nothing but a strong political necessity can authorize a violation of this principle: could it be made to appear that any such necessity existed in the present case, he would not hesitate to yield to it. But what are the facts adduced to make out such a case? The documents before us show an entire black population of hardly forty thousand of all ages and sexes, both slaves and free, scattered through a white population of nearly a million and a half; and that so far from the former gaining upon us, it has, for the thirty years past, sensibly diminished when compared with the latter. Whence, then, the apprehended danger, when an experience of forty years has brought with it none. The exclusion from the right of suffrage, of aliens, of females, and others, alluded to by a gentleman from Saratoga, all stand on grounds of public safety, or high political convenience. The exclusion of the blacks from militia duty, and from juries is founded only on considerations of feeling and taste in the whites, and adopted for the sole convenience of the latter, but it is not on any such principles that we can justify withholding from them the first of our general political rights, where its exercise is forbid by no considerations of public safety, or political necessity.

Debates, N. Y. Convention, pp. 369, 370.

JUDGE PLATT'S SPEECH.

[*The proviso violates a fundamental principle.*]

(*a*) *Mr. Platt** moved to expunge the proviso in the first section, which declares that no person, "*other than a white man,*" shall vote, unless he have a freehold estate of the value of $250. He said, I am not disposed, sir, to turn knight-errant in favor of the men of color. But the obligations of justice are eternal and indispensable: and this proviso involves a principle which, upon reflection, I cannot concede, or compromise as a matter of expediency. I am aware of the intrinsic

* *Note.*—Delegate from the county of Oneida.

difficulty of this subject. The evils of negro slavery are deep rooted, and admit of no sudden and effectual remedy. In the act of doing justice, we are bound to consider consequences. With such a population as that of Virginia, or the Carolinas, a sudden emancipation, and permission to the negroes to vote, would be incompatible with the public safety: and necessity creates a law for itself. But, sir, in this State there is no ground for such a plea. I would exclude the great mass of them, but not by this unjust and *odious* discrimination of *color*. We are under no necessity of adopting such a principle, in laying the foundation of our government.

(*b*) Let us attain this object of exclusion, by fixing such a uniform standard of qualification, as would not only exclude the great body of free men of color, but also a large portion of ignorant and depraved white men, who are as unfit to exercise the power of voting as the men of color. By adopting the principle of universal suffrage in regard to white men, we create the necessity, which is now pleaded as an excuse for this unjust discrimination.

[*Its injustice.*]

(*c*) Our republican text is, that all men are born equal, in civil and political rights; and if this proviso be ingrafted into our constitution, the practical commentary will be, that a portion of our free citizens shall not enjoy equal rights with their fellow citizens. All freemen, of African parentage, are to be constitutionally degraded: no matter how virtuous or intelligent. Test the principle, sir, by another example. Suppose the proposition were, to make a discrimination, so as to exclude the descendants of German, or Low Dutch, or Irish ancestors; would not every man be shocked at the horrid injustice of the principle? It is in vain to disguise the fact, we shall violate a sacred principle, without any necessity, if we retain this discrimination. We say to this unfortunate race of men, purchase a freehold estate of $250 value, and you shall then be equal to the white man, who parades one day in the militia, or performs a day's work on the highway. Sir, it is adding mockery to injustice. We know that, with rare exceptions, they have not the means of purchasing a freehold; and it would be unworthy of this grave Convention to do, *indirectly*, an act of injustice, which we are unwilling openly to avow. The real object is, to exclude the oppressed and degraded sons of Africa; and, in my humble judgment, it would better comport with the dignity of this Convention to speak out, and to pronounce the sentence of perpetual degradation on negroes and their posterity for ever, than to establish a test, which we know they cannot comply with, and which we do not require of others.

(*d*) The gentleman from Saratoga, who, as chairman of the committee, reported this proviso, (Mr. Young,) has exultingly told us, that ours is the only happy country where freemen acknowledge no distinction of ranks—where real native genius and merit can emerge from the humblest conditions of life, and rise to honors and distinction. It sounded charmingly in our republican ears, and I have but one objection to it, which is that, unfortunately for our patriotic pride, it is not true. I abhor the vices and oppressions which flow from privileged

orders as much as any man, but it is a remarkable truth, that in England, the present *Lord Chancellor Elden*, and his illustrious brother, *Sir William Scott*, are the sons of a *coal-heaver;* and the present *Chief Justice Abbot*, of the King's bench, is the son of a *hair-dresser.* The gentleman from Saratoga, (Mr. Young,) began his phillipic in favor of universal suffrage, by an eulogium on liberty and equality, in our happy State. And what then? Why, the same gentleman concluded by moving a resolution, in substance, that 37,000 of our free black citizens, and their posterity, for ever, shall be degraded by our constitution, below the common rank of freemen—that they never shall emerge from their humble condition—that they shall never assert the dignity of human nature, but shall ever remain a degraded caste in our republic.

The same gentleman recited to us, on that occasion, an elegant extract from an admired poet, (Gray's Elegy,) describing in melting strains, the effects of humble poverty, and mental depression. Let me ask, sir, who is it that now seeks to "repress the noble rage;" and to "freeze the genial current of the soul?"* I must be permitted to express my deep regret, that the gentleman's *poetry* and his *prose* do not agree in sentiment. I confess, sir, I feel some apprehension, when I anticipate, that the speeches of that honorable member will be read by the proud English critic; who will boast, that "slaves cannot breathe English air," that "they touch his country, and their shackles fall." The gentleman from Saratoga will be justly considered as a leading patriot and statesman in our republic; and if his text and his commentary, his precept and his practice, are at variance, we shall be nakedly exposed to the lash of criticism, from the hand of retaliation.

[*Progress of public sentiment.*]

(*e*) Before we adopt this proviso, I hope gentlemen will take a retrospect of the last fifty years. Consider the astonishing progress of the human mind, in regard to religious toleration; the various plans of enlightened benevolence; and especially the mighty efforts of the wise and the good throughout Christendom, in favor of the benighted and oppressed children of Africa.

In our own State, public sentiment has been totally changed on the subject of negro slavery. About sixty years ago, an act of our colo-

* *Note.*—The following are the remarks of Mr. Young, alluded to by Judge Platt: Mr. Y. contended that those who performed militia service, really paid a heavier tax than many freeholders of $2,000. Here young men were usually the framers of their own fortunes. They were not depressed, as in foreign countries, by a decree of irreversible humiliation. Here were no orders, ranks, or titles, but those of virtue and intellect. In India it was impossible that an individual of an inferior, degraded *caste*, should ever rise to a participation with those of a superior. In Europe, too, the prospects of the poor were hopeless. They cannot emerge from their situation, but were doomed to irremediable poverty.

> Fair Science to their minds her ample page,
> Rich with the spoils of time, can ne'er unroll;
> *Chill penury* repress'd their noble rage,
> And froze the genial current of the soul.

This melancholy reflection cannot apply in this country without the aid of imagition; but in Europe, although it was poetry, it was no fiction.

nial assembly was passed, with this disgraceful preamble: "Whereas, justice and good policy require that the African slave trade should be liberally encouraged." And within the last forty years, I remember, in the sale of negroes, it was no uncommon occurrence to witness the separation of husband and wife, and parents and children, without their consent, and under circumstances which forbid all hope of their ever seeing each other again in this world. And this was done without apparent remorse or compunction, and with as little reluctance on the part of buyer and seller, as we now feel in separating a span of horses, or a yoke of oxen. But I thank God, that a sense of justice and mercy has in a good measure regenerated the hearts of men. A rapid emancipation has taken place; and we approach the era, when, according to the existing law, slavery will be abolished in this State.

[*Claims of the people of color.*]

But, sir, we owe to that innocent and unfortunate race of men, much more than mere emancipation. We owe to them our patient and persevering exertions, to elevate their condition and character, by means of moral and religious instruction. And I rejoice that by the instrumentality of Sunday schools, and other benevolent institutions, many of them promise fair to become intelligent, virtuous, and useful citizens. Judging from our experience of the last fifty years, what may we not reasonably expect, in the next half century? Sir, if we adopt the principle of this proviso, I hope, and believe, that our posterity will blush, when they see the names recorded in favor of such a discrimination.

I beseech gentlemen to consider the enlightened age in which we live! Consider how much has already been accomplished by the efforts of Christian philanthropy! During the last forty years, we have brought up this African race from the house of bondage. We have led them nearly through the wilderness, and shown them the promised land. Shall we now drive them back again into Egypt? I hope not, sir. The light of science, and the heavenly beams of Christianity, are dawning upon them. Shall we extinguish these rays of hope? This is not a mere question of expediency. Man has no right to deal thus with his fellow man; except on the ground of necessity and public safety. It is not pretended that such a reason exists in this case. We shall violate a sacred principle, to avoid, at most, a slight inconvenience:—and, if I do not deceive myself, those who shall live fifty years hence, will view this proviso in the same light, as we now view the law of our New England fathers, which punished with death all who were guilty of being Quakers, or the law of our fathers in the colonial assembly of New York, which offered bounties to encourage the slave trade.

As a republican statesman, I protest against the principle of inequality contained in this proviso. As a man and a father, who expects justice for himself and his children, in this world; and as a Christian, who hopes for mercy in the world to come; I can not, I dare not, consent to this unjust proscription.

Debates, N. Y. Convention, pp. 374, 5, 6.

CHIEF JUSTICE SPENCER'S REMARK.

C. J. Spencer said he was opposed to the *proviso*, although on a former occasion he had voted to exclude the blacks altogether. His reasons were, that the rule contained in the *proviso* was incorrect. It gave to the owner of real estate, (of $250 in value,) an advantage over a man who might perhaps possess a leasehold estate worth $1,000, or personal property to the amount of $20,000.

Debates, N. Y. Convention, p. 276.

REMARK BY MARTIN VAN BUREN.

Mr. Van Buren said he had voted against a total and unqualified exclusion, for he would not draw a revenue from them, and yet deny to them the right of suffrage. But this proviso met his approbation. They were exempted from taxation until they had qualified themselves to vote. The right was not denied, to exclude any portion of the community who will not exercise the right of suffrage in its purity. This held out inducements to industry, and would receive his support.

There were two words, said Mr. V. B., which had come into common use with our revolutionary struggle; words which contained an abridgement of our political rights; words which, at that day, had a talismanic effect; which led our fathers from the bosoms of their families to the tented field; which, for seven long years of toil and suffering, had kept them to their arms; and which finally conducted them to a glorious triumph. They were "TAXATION and REPRESENTATION;" nor did they lose their influence with the close of that struggle. They were never heard in our halls of legislation, without bringing to our recollections the consecrated feelings of those who won our liberties, or without reminding us of every thing that was sacred in principle.

Debates N. Y. Convention, pp. 257, 276.

OGDEN EDWARD'S REMARK.

Mr. Edwards said, he considered it would be no better than robbery to demand the contributions of colored persons towards defraying the public burdens, and, at the same time, to disfranchise them.

Debates, N. Y. Convention.

CHANCELLOR KENT'S REMARK.

Chan. Kent said, that slavery existed in this State at the time of the revolution, and yet it was not recognised in the constitution. There was no such thing known in the constitution of the non-slaveholding States, with the exception of Connecticut, as a denial to the blacks of those electoral privileges that were enjoyed by the whites. In Europe the distinction of color was unknown. The judges of England said, even so long ago as the reign of Queen Elizabeth, that the air of England was too pure for a slave to breathe in. The same law

prevails in Scotland, Holland, France, and most of the other kingdoms of Europe.

Debates, N. Y. Convention, p. 377.

The question on striking out the PROVISO was then taken by *ayes* and *noes*, and decided in the negative, 71 to 33.

AYES and NOES as follows:—

AYES.—Messrs. Bacon, Barlow, Birdseye, Brooks, Buel, Child, R. Clarke, Day, Duer, Eastwood, Fish, Hees, Hogeboom, Huntington, Jay, Jones, Kent, Munro, Paulding, Pitcher, Platt, Rhinelander, Root, Sanders, N. Sandford, Spencer, Sylvester, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Wheaton, E. Williams, Wooster—33.

NOES.—Messrs. Baker, Beckwith, Bowman, Breese, Briggs, Burroughs, Carpenter, Carver, Case, D. Clark, Cramer, Dubois, Dyckman, Edwards, Fairlie, Fenton, Ferris, Frost, Howe, Humphrey, Hunt, Hunter, Hunting, Hurd, Lansing, Lawrence, A. Livingston, P. R. Livingston, M'Call, Moore, Nelson, Park, Porter, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Rose, Ross, Russell, Sage, R. Sandford, Schenck, Seaman, Seely, Shape, Sheldon, I. Smith, R. Smith, Stagg, Starkweather, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, Ward, A. Webster, Wendover, N. Williams, Woods, Yates, Young—71.

Debates, N. Y. Convention, p. 377.

Afterwards, the vote was taken on the adoption of the entire report relating to suffrage, including the *proviso*, and decided in the *affirmative*—ayes 74, noes 38.

And so the freehold qualification, now affixed to the right of voting by colored citizens of the State of New York, was adopted. And such is the history of it. By this measure a large number of the people of the State, who, from 1777, when the old constitution was formed, for forty-five years had enjoyed the right of voting, on the same terms as white citizens, were disfranchised. The odious principle of making discriminations among men, on the ground of color, was established; and, by engrafting it into the fundamental law of the State, a monument of injustice has been reared, which will take years to demolish

The Convention of 1821 contained as large a number of men of the first order of mind and attainments, as any similar body ever assembled in the United States. And it is a trait worthy of notice, in the members of that assembly, that the most respectable, the purest and best, were found on the side of the colored people. It would be invidious, perhaps, to discriminate among the living, though we could point to such men as a Chancellor Kent, a Jay, and Van Rensselaer. But in regard to the dead, many of the worthiest and ablest in that body are now of that number. And of these are Jonas Platt, and Wm. W. Van Ness, both, when living, Justices of the Supreme Court, Rufus King, long a Senator of the UnitedStates, and Abraham Van Vechten, in life the well known patriarch of the New York Bar, all of whom, and others who might be named, advocated the rights of the people of color.

We look in vain for names of equal worth in the opposing column. *Martin Van Buren* was in that Convention, and voted with the majority for striking out the word white. He was opposed to making the complexion of a man the standard of his political rights. And he advocated the principle of exempting all from taxes who were not permitted to vote. He voted for the freehold qualification.

Chief Justice Spencer, on the first vote, went for excluding colored citizens from suffrage. And in regard to white citizens he was a strenuous advocate for preserving the freehold qualification; but when the Convention had decided to take off that qualification from the latter, he voted against attaching it to the exercise of the right by the former. The reason assigned for his vote is contained in a previous paragraph.

A plain and palpable contrast in the spirit and character of the men who arrayed themselves on opposite sides of the question, is manifest all through the proceedings on the subject. And whoever will read the debates in full (here, by the way, sketches only are given,) will observe it. It is the remark of one who was a member of that Convention that, perhaps, there was never a question which more completely drew a line of moral division between the members of a body, than this.

As an illustration of what is meant by a difference in spirit and character, a single example is given below. Others might be furnished; but this will be sufficient.

PETER A. JAY'S REPLY TO MR. BRIGGS.

Mr. Jay said, it was not his intention to revive the discussion and he rose merely to make some reply to the remarks which had fallen from the gentleman from Schoharie, (Mr. Briggs.) He could wish that gentleman had assigned some reasons why persons of color might not be as intelligent and virtuous as white persons. Had nature interposed any barriers to prevent them from the acquisition of knowledge, or the pursuit of virtue? It was true that they were now, in some measure, a degraded race; but how came they so? Was it not by our fault, and the fault of our fathers? And because they had been degraded, the gentleman from Schoharie was for visiting the sins of the fathers upon the children, and for condemning them to eternal degradation. He could not but think there were too many unfounded prejudices; to much pride of democracy on this subject. However we may scorn, and insult, and trample upon this unfortunate race now, the day was fast approaching when we must lie down with them in that narrow bed appointed for all the living. Then, if not before, the pride of distinction would cease. There the prisoners rest together; they hear not the voice of the oppressor. The small and the great are there; and the servant is free from his master. In commingled and undistinguished dust we must all repose, and rise together at the last day. God has created us all equal; and why

should *we* establish distinctions? We are all the offspring of one common Father, and redeemed by one common Saviour—the gates of paradise are open alike to the bond and the free. He hoped the committee would never consent to incorporate into the constitution a provision which contravened the spirit of our institutions, and which was so repulsive to the dictates of justice and humanity.

Debates, N. Y. Convention, p. 365.

MR. BRIGGS' *UNCOUTH* REJOINDER.

Mr. Briggs replied to the objections that had been raised by the honorable gentleman from West Chester, (Mr. Jay.) That gentleman had remarked that we must all ultimately lie down in the same bed together. But he would ask that honorable gentleman whether he would consent to lie down, in life, in the same feather bed with a negro!!! But it was said that the right of suffrage would elevate them. He would ask whether it would elevate a monkey, or a baboon, to allow them to vote!!

Ib., p. 365.

The speeches from which the following are extracts, were delivered in the Convention in the debate on the right of suffrage. And although not specially designed to have reference to the exercise of suffrage by citizens of color, but to all citizens in general; yet the principles they are based upon, and the matter they contain, will be conceded to be of sufficient importance to the subject in hand to justify their insertion here.

SPEECH OF DAVID BUEL, JR.

ON THE IMPOLICY OF CONFINING THE RIGHT OF SUFFRAGE TO LANDHOLDERS.

(Extracts.)

[*Practice of other States.*]

(*a*) The question, said *Judge Buel*,* whether it is safe and proper to extend the right of suffrage to other classes of our citizens besides landholders, is decided, as I think, by the sober sense and deliberate acts of the great American people. To this authority I feel willing to bow. An examination of the several Constitutions of the different States, will show us that those enlightened bodies of statesmen who have from time to time been assembled for the grave and important purpose of forming and reforming the Constitutions of the States, have sanctioned and established as a maxim, the opinion that there is no danger in confiding the most extensive right of suffrage to the intelligent population of these States.

Of the twenty-four States which compose this Union, twelve States require only a certain time of residence as a qualification to vote for all their elective officers—eight require, in addition to residence, the payment of taxes or the performance of militia duty—four States only

* Delegate from Rensselaer.

require a freehold qualification, viz:—New York, North Carolina, Virginia, and Rhode Island. The distinction which the amendment of the gentleman from Albany (Mr. V. R.) proposes to continue, exists only in the constitution of this State and in that of North Carolina.

In some of the States, the possession of a freehold constitutes one of several qualifications, either of which gives the right of suffrage; but in four only is the exclusive right of voting for any department of government confined to landholders.

The progressive extension of the right of suffrage, by the reformations which have taken place in several of the State constitutions, adds to the force of the authority. By the original constitution of Maryland, (made 1776,) a considerable property qualification was necessary to constitute an elector. By successive alterations, in the years 1802 and 1810, the right has been extended to all white citizens who have a permanent residence in the State. A similar alteration has been made in the constitution of South Carolina; and by the recent reformations in the constitutions of Connecticut, and Massachusets, property qualifications in the electors have been abolished; the right is extended in the former almost to universal suffrage, and in the latter, to all citizens who pay taxes. It is not in the smaller States only, that these liberal principles respecting suffrage have been adopted. The constitution of Pennsylvania, adopted in the year 1790, extends the right of suffrage to all citizens who pay taxes, and to their sons between the ages of twenty-one and twenty-two years.

That constitution was formed by men distinguished for patriotism and talents. At the head of them we find Judge Wilson, a distinguished statesman, and one of the founders of the constitution of the United States.

The constitution of Pennsylvania was formed on the broad principles of suffrage which that distinguished man lays down in his writings. "That every citizen, whose circumstances do not render him necessarily dependant on the will of another, should possess a vote in electing those by whose conduct his property, his reputation, his liberty, and his life may be almost materially affected." This is the correct rule, and it has been adopted in the constitution of every State which has been formed since the government of the United States was organized. So universal an admission of the great principles of general suffrage, by the conventions of discreet and sober minded men, who have been employed in forming and amending the different constitutions, produces a strong conviction that the principle is safe and salutary.

[*The security of property.*]

(*b*) It is supposed that landed property will be rendered insecure by extension of the right of suffrage and the influx of a more dangerous population. The gentleman from Albany, (Mr. Kent,) has drawn a picture from the existing state of society in European kingdoms, which would indeed be appalling, if we could suppose such a state of society could exist here. But are arguments drawn from the state of

society in Europe applicable to our situation. Did I believe our population would degenerate into such a state, I should hesitate in extending the right; but I confess I have no such fears. There are, in my judgment, many circumstances which will for ever preserve the people of this State from the vices and degradation of a European population. The provisions made for the establishment of common schools, will in a few years extend the benefit of education to all our citizens. The universal diffusion of information will for ever distinguish our population from that of Europe. Virtue and intelligence are the true basis on which every republican government must rest; where these are lost, freedom will no longer exist. The diffusion of education is the only sure means of establishing these pillars of freedom. I feel no apprehension for myself or my posterity, in confining the right of suffrage to the great mass of such a population. The farmers of this country will always out-number all other portions of our population. Admitting that the increase of our cities, and especially of our commercial metropolis, will be as great as it has hitherto been, it is not to be doubted that the agricultural population will increase in the same proportion. The city population will never be able to depress that of the country.

[*Property not the true basis.*]

(*c*) I contend, that, by the true principles of our government, property, as such, is not the basis of representation. Our community is an association of persons—of human beings—not a partnership founded on property.

[*The writers of the Federalist.*]

(*d*) And I refer to the general reasoning adopted by the writers of the *Federalist*, to demonstrate the wisdom of the provisions in our national constitution, in regard to the qualifications of electors and elected. Those illustrious statesmen have most satisfactorily shown it to be a prominent feature in the constitution of the United States, and one of its greatest excellencies, that *orders and classes of men, would not, and ought not, as such, to be represented;* that every citizen, qualified by his talents and virtues, should be eligible to a seat in either branch of the national legislature, without regard to his occupation or class in society. And it was predicted and expected that men of every class and profession, would find their way to the legislature of the Union. The framers of the constitution placed their confidence in the virtue and intelligence of the great mass of the American people. It was their triumphant boast to have formed a government without recognising or creating any odious distinctions, or giving any particular preference to any particular class or order of men.

Debates, N. Y. Convention, pp. 239, 40, 41.

SPEECH OF JOHN CRAMER, Esq.

(Extract.)

(*a*) Mr. *Cramer** said, I had supposed that the great fundamental principle, that all men were equal in their rights, was settled, and for ever settled in this country. I had supposed, sir, that there was some meaning in those words, and some importance in the benefits resulting from them. I had supposed, from the blood and treasure which its attainment cost, that there was something invaluable in it; and that, in pursuance of this principle, it ought to be the invariable object of the framers of our civil compact, to render all men equal in their political enjoyments as far as could be consistent with order and justice. But this we are assured is an egregious mistake, and that in it consists the very essence of aristocracy.

Debates, N. Y. Convention, pp. 235, 6.

* Delegate from the county of Saratoga.

THE CITIZENSHIP

OF

PERSONS OF COLOR.

"The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

Const. U. S. Art. iv. *Sec.* 2, *clause* 1.

These are important and valuable privileges.

"Do they belong to free persons of color?

If they were *white* it is conceded they would. The point then turns on a distinction of *color*.

But such a distinction, as the basis of fundamental rights, is not recognised by the common law of England, or the principles of the British constitution; nor by our own declaration of independence.

Free persons of color are human beings, natives of the country—for of such we speak—and owe the same obligations to the State, and to its government as white citizens." They have an equal right to liberty—to the enjoyment and security of home and family—and of a good name and character as white men; so, to all the rights of conscience—to read, write, and print—to speak, teach, and debate—to preach, and worship God according to its dictates—their title is the same as that of white men. They have the same right to the rewards of their industry, as white men.—They may buy, hold, or sell real or personal estate, the same—and they are as fully entitled to the protection of the law—have a right to sue—to jury trial—to a verdict and judgment—to execution—to *habeas corpus*, and in some of the States to the writ of *homine replegiando*, or writ of personal replevin, as white men.—For them all our courts, from the highest to the lowest, are as open, and the officers as much bound to issue, to obey, and execute process, as for white men; and they equally, as white citizens, enjoy the advantages of the public mail.*

"Thus we see the colored man is not of an intermediate class—his relations to society are the same as others; his absolute and relative rights; his rights of person and to things; his acquisitions of property by contract, and by inheritance; and even the soil which no alien inherits, are the same. Every favor or right conferred on the citizens by general legislation, reaches *him*, and every requisition demands his obedience.

In all the writers on public law there is one ancient and universal classification of the people of a country; all who are born within the jurisdiction of a State are natives, and all others are aliens. This classification grows out of the doctrine of natural allegiance, a tie created by

* *Note.*—Colored persons, it is believed, are not allowed to *carry* the mail.

birth. All writers agree in the foundation of allegiance, and in its obligations while it exists; some holding that it can never be thrown off, and some that it may be under legislative enactments, but all agreeing that while the residence of the citizen continues in the State of his birth, allegiance demands obedience from the citizen, and protection from the government. Allegiance is not peculiar to any one government or country, but it is held to exist in every country and every government where there are pretensions to social order and civil institutions. It reaches the man of one complexion as much as that of another. It is the ordinance of the great parent of all society, fairly inferible from the nature and necessity of human government. If allegiance is due from our colored population, its correllative is due from the government, viz.: protection and equal laws. If allegiance is an ordinance of Heaven, it reaches, and binds, and confers rights upon every man within its range and rightful sway. Here the free man of color may take his position, and upon the immutable principles of justice and truth, demand his political rights from that government which he is bound to aid and to defend. *He is not a citizen to obey, and an alien to demand protection.*

But it may be objected, that although they enjoy all the absolute and relative rights, and all personal rights, the same as a white man, yet they are not citizens, because they do not vote. To this it is replied, that in many of the States they do vote.

But the right of voting is *not* the criterion of citizenship; the one has no natural or necessary connexion with the other; cases may exist where persons may vote who are not citizens, and where persons are citizens and do not vote. The right of suffrage is no where universal and absolute. It is founded in notions of internal police, varying frequently, even in the same government; whereas, citizenship grows out of allegiance, which is every where the same and is unchanging. Persons sometimes vote for one branch of the government only, as was lately the case in New York. How much of a citizen was such a voter? Formerly property was a necessary qualification in Connecticut. Were none but persons of property citizens? Suppose a voter in Connecticut should lose his right of suffrage, by reason of criminal conduct, as by law he may do, does he cease to be a citizen? Does he become an alien? No female can vote, nor a minor, but are not females and minors citizens?

If voting makes a citizen, what confusion! The same man in one State is a full citizen; in another, half a citizen; in another, a nondescript; in another, an alien? How absurd to create such distinctions in these States."

"Another objection is, that *Indians* are not citizens; and hence it is inferred, that free negroes are not. In the first place, free negroes are not Indians. But, secondly, Indians have hitherto been treated as members of national tribes, in alliance with the United States, according to treaty stipulations and the intercourse law. They have been held to be without the *practical* jurisdiction of the States. But since Congress has withdrawn its ancient jurisdiction, and the States have extended theirs over these tribes, it is not certain what is the exact *political* character of an *Indian* born in these States. Even in New

York, before the late change in our *Indian* affairs, they were there decided to be *citizens*, by a unanimous opinion of the Supreme Court, on the ground of the State's having jurisdiction, and the *Indians* owing allegiance." *Jackson & Smith* vs. *Godell*, 20 *John's Rep.* 188, 191, 2, 3.

Again, it is objected that slaves are not citizens. The reason why slaves are not citizens, is, because they are held as *property*, and not men; and hence have not freedom of choice or action. The reason does not reach free colored men.

MISSOURI QUESTION.

RELATING TO THE CITIZENSHIP OF FREE PERSONS OF COLOR.

The compiler of this work is not aware of any data to justify a belief that, during the period of the revolution, or for years afterwards, a doubt was raised as to the citizenship of free persons of color. The first time in the annals of our government, that the subject, as a legal or constitutional question, seems to have been entertained, was in the celebrated debate on the admission of Missouri. In that great controversy the question of their citizenship became one of the hinges upon which it turned.

The question arose in this manner.

The people of Missouri made overtures to Congress for admission into the Union as a sovereign and independent State; and at the same time submitted the constitution they had framed.

But their admission into the Union was resisted by a majority in Congress, on the ground that a clause of the 26th section of article 3 of the proposed constitution, made it a duty of the general assembly to pass such laws as might be necessary "*to prevent free negroes or mulattoes from coming to or settling in the State, under any pretext whatever;*" which it was maintained was a violation of the constitution of the United States, (*Art.* iv. *Sec.* 2, *clause* 1,) wherein it is declared, "*That the citizens of each State shall be entitled to all the privileges and immunities of the citizens in the several States.*"

Hereupon a debate of great interest arose, which agitated the Union to the remotest extremity. The extracts of speeches which follow below, are taken from those who maintained the legal and constitutional rights of the free colored population as citizens of the United States.

The issue of the controversy was as follows:

The refusal to admit Missouri into the Union was not withdrawn until the general assembly of that State, in conformity to *a fundamental condition* imposed by Congress, had, by an act passed for that purpose, solemnly enacted and declared, "That this State [Missouri] has assented, and does assent, that the 4th clause of the 26th section of the 3d article of their constitution should never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the United States shall be excluded from the enjoyment of any of the privileges and im-

munities to which such citizens are entitled under the constitution of the United States."

Niles's Register, Aug. 18, vol. xx. pp. 338, 339.

And the State of Missouri having thus manifested her assent to the fundamental condition imposed by Congress, and having officially communicated the fact to James Monroe, President of the United States, he in pursuance, and under the authority of the resolution of Congress prescribing the condition aforesaid, by his proclamation, dated August 10, 1821, declared the admission of Missouri into the Union to be complete.

The committee, consisting of Messrs. *Lowndes*, *Smith*, and *Sargeant*, (two from a slaveholding, and one from a free State,) to whom the constitution was referred for examination, had reported favorably to the admission of Missouri, yet they admitted there were free negroes and mulattoes who were citizens.—"The committee are not unaware, (said Mr. Lowndes,) that a part of the 26th section of the 3d article of the constitution of Missouri, by which the legislature of the State has been directed to pass laws to prevent free negroes and mulattoes from coming to and settling in the State, has been construed to apply to *such* of that class *as are* citizens of the United States, and that their exclusion has been deemed repugnant to the federal constitution."

Niles's Register, Nov. 25, 1820, vol. ix. pp. 206, 207.

In his speech on the subject, this admission is still more broadly made: "It might be quite fair to say, (said Mr. Lowndes,) that that provision, respecting free people of color, must be construed liberally, as intending to exempt from its operations such of them as *were citizens* in other States." Mr. Lowndes was leader in the debate on the side of Missouri, and being also chairman of the committee who had reported in her favor, *his* admission is of value.

HON. WILLIAM EUSTIS,

Late Governor of Massachusetts, and a Soldier of the Revolution—Extracts from his Speech delivered in the Congress of the United States, Dec. 12, 1820, *on the Missouri Question.*

The question to be determined, said Mr. *Eustis*, is, *whether* that article in the constitution of Missouri, requiring the legislature to provide by law "that free negroes and mulattoes shall not be admitted into that State," is, or is not, repugnant to that clause of the constitution of the United States, which declares "that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." This is the question. Those who contend that the article is not repugnant to the constitution of the United States, take the position that free blacks and mulattoes are not citizens. *Now, I invite the gentlemen, who maintain this, to go with me and examine this question to its root.*

At the commencement of the revolutionary war, there were found

in the Middle and Northern States, many blacks, and other people of color capable of bearing arms; a part of them free, and a greater part slaves. The freemen entered our ranks with the whites. The time of those who were slaves, were purchased by the State, and they were induced to enter the service in consequence of a law, by which, on condition of their serving in the ranks during the war, they were made freemen. In Rhode Island, where there numbers were more considerable, they were formed, under the same considerations, into a regiment, commanded by white officers; and it is required in justice to them, to add, that they discharged their duty with zeal and fidelity. The gallant defence of Red Bank, in which the black regiment bore a part, is among the proofs of their valor.

Among the traits which distinguished this regiment, was their devotion to their officers; when their brave Colonel Green was afterwards cut down and mortally wounded, the sabres of the enemy reached his body only through the bodies of his faithful guard of blacks, who hovered over him to protect him, every one of whom was killed; and whom *he* was not ashamed to call his children. The services of this description of men in the navy are also well known.

The war over, and peace restored, these men returned to their respective States; and who could have said to them, on their return to civil life, after having shed their blood in common with the whites in the defence of the liberties of the country—You are not to participate with us in the rights secured by the struggle, or in the liberty for which you have been fighting? Certainly no white man in Massachusetts.

The gentleman from Virginia says, that the term "We the people" (in the preamble of our national constitution,) does not mean or include Indians, free negroes, or mulattoes. If it shall be made to appear that persons of this description, citizens at the time, were parties to and formed an integral part of that compact, it follows, that they are and must be included in it. To justify the inferences of gentlemen, the preamble should read, "We, the *white* people." But this was impossible; the members of the convention who formed the constitution, from the Middle and Northern States, could never have consented, knowing that there were in those States many thousands of people of color, who had rights under it. They were free—free from their masters. Yes, in the first instance, they also became freemen of the State, and were admitted to all the rights and privileges of citizens. They enjoyed and exercised the rights of free citizens, and have continued to exercise them from the peace of 1783 to this day.

In Massachusetts they constituted, and were, in fact, an elementary part of the federal compact. They were as directly represented as the whites, in the initiatory process; and from their votes, in common with those of the whites, emanated the convention of Massachusetts, by whom the federal constitution was received and ratified. Is not this proof? Is it not demonstration that they are entitled to, that they hold and exercise federal rights in common with our other citizens? If a doubt remains, it is answered by another important fact. They are also represented, not circuitously and indirectly, but *directly*, in this House. I very much doubt, sir, if there be a mem-

ber on this floor, from any one district in Massachusetts, whose election does not partake of the votes of these people.

Not only the rights, but the character of these men, do not appear to have been understood; nor is it to me, at all extraordinary, that gentlemen from other States, in which the condition, character, the moral faculties, and the rights of men of color differ so widely, should entertain opinions so varient from ours. In Massachusetts, sir, there are among them those who possess all the virtues which are deemed estimable in civil and social life. They have their public teachers of religion and morality—their schools and other institutions. On anniversaries which they consider interesting to them, they have their public processions, in all which they conduct themselves with order and decorum. Now we ask only that in a disposition to accomodate others, their avowed rights and privileges be not taken from them.

If their number be small, and they are feebly represented, we to whom they are known are proportionably bound to protect them. But their defence is not founded on their numbers; it rests on the immutable principles of justice. If there be only one family, or a solitary individual, who has rights guaranteed to him by the constitution, whatever may be his color or complexion, it is not in the power, nor can it be the inclination of Congress to deprive him of them. And I trust, sir, that the decision on this occasion will show that we will extend good faith even to the blacks.

Nat. Int., Jan. 2, 1831.

MR. MORRILL, OF NEW HAMPSHIRE.

Extract from his Speech in the Senate of the United States, delivered December, 1820, on the Missouri Question.

I proceed now, said Mr. *Morrill*, to show the consequences of this provision, [of the constitution of Missouri to prevent the settlement of free negroes and mulattoes within that State, on any pretext whatever.]

Some States have free citizens of color. This is the case in New Hampshire, Vermont, and Massachusetts. In Vermont, there is a mulatto man, by the name of Haynes, who is a regular ordained minister in Rutland. He is pastor of a church and society of white people—has been frequently moderator of the theological association to which he belongs, and also of ecclesiastical councils convened for the ordination of ministers. In fact, his education, moral character, and standing in society are such, that he has received an honorary degree of Master of Arts from the University. But this man and his family, although of high standing in the community, and possessing all the faculties of citizens, are proscribed, and by the constitution of Missouri are prohibited settling in that State.

In New Hampshire there is a yellow man, by the name of Cheswell, who with his family were respectable in point of property, abilities, and character. He held some of the first offices of the town in which he resided, was appointed Justice of the Peace for the county, and was perfectly competent to perform with ability all the duties of his

various offices in the most prompt, accurate, and acceptable manner. But this man and his family are forbidden to enter and live in Missouri.

In Boston, there is a mulatto man, by the name of Thomas Paul, a regularly ordained Baptist minister, pastor of a church of people of color, at whose meeting many white people attend, and who preaches by exchange, or otherwise, with all the neighboring ministers of his denomination.

Sir, you exclude not only these citizens from their constitutional privileges and immunities, but also your soldiers of color, to whom you have given patents of land. You had a company of this description. They have fought your battles. They have defended your country. They have preserved your privileges; but have lost their own. What did you say to them on their enlistment? "We will give you a monthly compensation, and, at the end of the war, 160 acres of good land, on which you may settle, and by cultivating the soil spend your declining years in peace, and in the enjoyment of those immunities for which you fought and bled." Now, sir, you restrict them, and will not allow them to enjoy the fruit of their labor. Where is the public faith in this case? Did they suppose, with a patent in their hand declaring their title to land in Missouri, with the seal of the nation and the President's signature affixed thereto, it would be said unto them by any authority, you shall not possess the premises? This could never have been anticipated; and yet this must follow if colored men are not citizens.

Nat. Int., Jan. 11, 1821.

JOSEPH HEMPHILL, OF PENNSYLVANIA.

Extracts from his Speech, delivered in Congress, December 11, 1820, *on the Missouri Question.*

ARE FREE BLACK PEOPLE CITIZENS OR NOT?

[*Their condition at the time of forming the State constitutions.*]

Mr. *Hemphill.* At this stage I beg the House to recollect, that previous to the adoption of the constitution of the United States, each State had the unquestionable right of saying who should compose its own citizens; and if, at the adoption of the constitution of the United States, free negroes and mulattoes were citizens of any one State in the Union, the federal constitution gave to such citizens all the privileges and immunities of the citizens of the several States.

When our different constitutions were formed, this class of people lived among us; not in the character of foreigners—they were connected with no other nation; this was their native country, and as dear to them as to us. Thousands of them were free born, and they composed a part of the people in the several States; they were identified with the nation, and its wealth consisted in part of their labor. They had fought for their country, and were righteously included in the principles of the declaration of independence. This was their condition when the constitution of the United States was formed, and that high instrument does not cast the least shade of doubt upon any of their rights or privileges; I challenge gentlemen to examine it,

with all the ability they are capable of, and see if it contains a single expression that deprives them of any privilege that is bestowed upon others.

[*Their personal rights.*]

They have a right to pursue their own happiness in as high degree as any other class of people. Their situation is similar to others in relation to the acquirement of property and the various pursuits of industry. They are entitled to the same rights of religion and protection, and are subject to the same punishments. They are enumerated in the census. They can be taxed, and made liable to militia duty. They are denied none of the privileges contained in the bill of rights. And although many of these advantages are allowed a stranger during his temporary residence, yet in no instance is a free native black man treated as a foreigner.

When they enjoy all these rights, civil and religious, equally with the white people; and when they all flow from the same constitutions and laws, without any especial reference or designation of them, I have a curiosity to learn upon what principle any right can be singled out as one of which they are to be deprived.

I appeal to the public transactions of this country, to the different constitutions and to the laws, for the correctness of this position; that whenever exceptions are intended to be made in regard to this class of people, that it requires express provisions for the purpose. It is said they are not witnesses in some States; but it requires a particular law to render them incompetent to give testimony.

[*Citizenship.*]

As to citizenship—if being a native, and free born, and of parents belonging to no other nation or tribe, does not constitute a citizen in this country, I am at a loss to know in what manner citizenship is acquired by birth.

When a foreigner is naturalized he is only put in the place of a native freeman. This is the general idea of naturalization.

The word citizen, in its original sense, I believe only meant a free person of a city; it had no application here until after our independence; and then it had to be accommodated to the customary and peculiar character of our complex system. In our political acceptation of the word, it differs in theory and origin from allegiance; that was a feudal connexion acknowledging the distinction of superior and inferior. It was a species of slaves tenure. But citizenship is rather in the notion of a compact, expressly or tacitly made; it is a political tie, and the mutual obligations are, allegiance and protection.

[*Impressed seamen.*]

If our free black population should be impressed in a foreign port, how could we redress the wrong, if we have no political connexion with them—if they do not belong to our political family? Previous to the revolution they were British subjects, and they were dissolved from any further connexion with that nation at the same time with the white people; and it would be exceedingly strange, if from that

moment they ceased to be connected with any political society. Cases are familiar where they assume, not only the appearance, but the reality of a citizenship. If they should engage in commerce, none of the regulations as to foreigners would be applicable to them. Can there exist any doubt as to their capacity of sustaining actions in the federal courts in the character of citizens?

[*Citizens by the articles of confederation.*]

But all our researches on this subject aim principally at one object; it is to ascertain what was the opinion of the patriots of this country at an early day respecting this question. This is a fountain, when reached, that cannot deceive us; and in looking into the ancient records of this government, we find that this very question attracted attention, and received a solemn decision.

The 4th article of the confederation reads as follows: "The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in the Union, the *free inhabitants of each of these States*, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of *free citizens in the several States.*" This language includes every free inhabitant, whether black or white, and clothes him with all the privileges of a citizen; and that this was the actual intention appears from the minutes taken when the convention was agreed to, (*see Laws U. S.* vol. i. p. 26.) When the 4th article was under consideration, the delegates from South Carolina being called, moved the following amendments in behalf of their State. First, in article 4th, between the words "free" and "inhabitants" insert the word "*white;*" passed in the negative, two ayes, eight noes, and one State divided; it was then moved, after the words "the several States," to insert the words "according to the laws of such States respectively, for the government of their own free white inhabitants;" passed in the negative, two ayes, eight noes, and one State divided.

[*Citizens by the law of Congress of* 1783.]

And in the Journal of Congress, 1783, we are furnished with the opinion of Congress on this subject in terms equally clear and explicit, when it was resolved, (with the exception of two States, one of which was divided,) "that all charges of war, and all the expenditures that have been, or shall be incurred for the common defence and general welfare, &c., shall be defrayed out of the common treasury, which shall be supplied by the several States, in proportion to the whole number of *white and* OTHER *free citizens*, and inhabitants of every age, sex, and condition, &c.

Here it is acknowledged expressly, that there were other free citizens besides *white* citizens. If this will not convince gentlemen that free negroes and mulattoes were, from early times, considered as citizens, and composed a part of the people who chose the delegates to frame the federal constitution, it will be in vain for me to urge the matter further.

HON. MR. BURRILL, OF R. I.

Remark in the Senate U. S.

A citizen, said Mr. *B.*, is a person not a slave or foreigner, but born in the United States, and a freeman—going to Missouri he has the same rights as if he had been born in Missouri.

All the distinctions among citizens which arise from color rested on *State* laws alone; there was nothing in the constitution of the United States which recognised distinctions. In Massachusetts there was no distinction. A man of color possessed there precisely and identically the same rights as a white man born in the same State; and he asked if it was possible for Missouri, consistently with the constitution of the United States, to exclude any of those people from that State who should think proper to remove from Massachusetts to Missouri.

MR. STRONG, OF NEW YORK.

Extracts from his Speech, delivered in Congress, Dec. 9th, 1820, on the Missouri Question.

[*Characteristics of a citizen.*]

Are our free negroes and mulattoes citizens? Facts and experience in politics and morals, are better than definitions. The characteristics of a citizen are, the right of passing freely, and unmolested, from town to town, and place to place, within the State, and of residing, at pleasure, in any part of the same. That these rights belong to every one entitled to the high privileges of a citizen, I think will not be denied. All free persons have this right, except aliens, lunatics, vagabonds, and criminals.

The federal constitution knows but two descriptions of freemen. These descriptions are citizens and aliens. Now Congress can naturalize only aliens, *i.e.*, persons who owe allegiance to a foreign government. But a slave has no country, and owes no allegiance, except to his master. How, then, is he an alien? If restored to his liberty, and made a freeman, what is his national character? It must be determined by the federal constitution, and without reference to policy; for it respects personal liberty. Is it that of citizen, or alien? But it has been shown that he is not an alien; may we not, therefore, conclude, nay, are we not bound to conclude, that he is a citizen of the United States.

Facts are better than theories. In many of the States they are recognised as citizens, and are, among other things, eligible to office, entitled to hold real estate, to vote, to sue, and to be sued. In some of the States, their fathers, with ours, fought the battles of the revolution. Vermont was admitted into the Union in 1791, and had then, and still has, free negroes and mulattoes, whose citizenship, by the citizens of that State, has never been doubted.

[*Can prosecute in United States courts.*]

I will refer again to the federal constitution. It is there declared, that the judicial power shall extend (among other cases) to controversies between citizens of different States. Now, any person in the State of Maryland who can prosecute a citizen of Virginia under this clause, must be a citizen of Maryland; and so of every other State. Is not this a sure criterion of citizenship? Who then can prosecute? Is there a *freeman* in the nation, not an alien, and domiciled in a State, who cannot prosecute and be prosecuted in the federal courts? If there be one, it must be owing to some legal disability. Are *free* negroes and mulattoes, domiciled in a State, under any disability? The federal constitution interposes none, and I know no law or judicial decision which does. If they can prosecute in the federal courts, under this clause of the federal constitution, then they are citizens of the States.

MR. STORRS, OF NEW YORK.

Extracts from his Speech, delivered in Congress Dec. 8th, 1820, on the Missouri Question.

[*Rights and privileges in New York.*]

The description of persons disfranchised by the proposed constitution of Missouri, have been admitted to the rank of freemen in other States, and recognised as citizens. In the State of New York, for instance, they have, in many cases, more decisive characteristics of citizens, and enjoy greater privileges than a large class of the free white population, to whom none would deny the character of citizens. Possessed of the qualifications of suffrage required by her State constitution, they exercise the electoral right of voting for the executive and senatorial department, while a greater portion of the free white population, not invested with the same qualifications, enjoy only the subordinate privilege of electing delegates to the house of assembly, or are deprived altogether of the right of suffrage. As freemen of that State, they are represented even here by the exercise of their electoral franchise, in virtue of their character as a portion of the people of the several States, having the qualifications for electors of the most numerous branch of the State legislature.

[*Protection to seamen.*]

By referring to the constitutions of many other States, we may see the same recognition of this class of persons as free citizens; but a more decisive evidence is, that the laws of the United States for the protection of American seamen from impressment, have been construed (and without question of the correctness of such an interpretation) to extend to this class of persons. As citizens of the United States, according to the terms of the act, they have uniformly received certificates of protection for security against the violation of their rights. The impressment of persons of this very description, among others, contributed to our loud and just complaints against the violence of a foreign power. In the official returns of impressed American citizens, heretofore formally communicated to this House, will be found many of this class.

HON. HARRISON GRAY OTIS, OF MASS.

Extracts from his Speech, delivered December 9th, 1820, in the Senate of the United States, on the Missouri Question.

[*Condition of free people of color.*]

In any State, (but he would speak more particularly of Massachusetts,) if a man of color could be a citizen there, he would carry his privilege elsewhere. In that State, at the time of the revolution, the people were considered as retaining all such portions of the common law of England as were applicable to their circumstances. By that law the people of England were distinguished into citizens, denizens, and aliens: and he might safely contend, that, in all the States, they were either citizens, aliens, or slaves. All persons born within the realm of England were citizens; all persons born in Massachusetts, of free parents, were citizens; and all persons in that State, not aliens or slaves, (and there could be none of the latter, though, perhaps, a fugitive slave might have been considered as an alien prior to the federal stipulation on that point,) were, of consequence, free citizens.

[*Protection and allegiance involve citizenship.*]

To this relationship of a free citizen to his State, protection and allegiance were the necessary incident, and these imply, of necessity, a right to reside within its jurisdiction, and to be secure of life, liberty, and property, under the guardianship of the laws. Every citizen is held to serve the State in time of danger and of war, and to contribute to the public burdens. He is entitled to redress when injured by a foreign power, to be reclaimed when unjustly captured and detained; and when he brings an action for land, alienage cannot be pleaded in bar to his demand. If he possesses these rights, and stands in this relation to the State, he is a citizen. In Massachusetts many persons of color stood in this relation to the State, and he should believe, until the contrary was shown, that the same was true in every State in the Union.

[*Acts of The Confederation and Old Congress.*]

To strengthen this construction, he quoted the 4th article of the first confederation, which ordains, "that *the free inhabitants* of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to *all privileges and immunitives of free citizens* in the several States, and shall have free ingress and regress," &c. He also quoted from the journals of the old Congress, the resolve which formed the basis of the new constitution, and which recommends the apportionment of taxes upon "the number of white *and other* free citizens," and made comments upon them, which he considered as conclusive in favor of his construction. Pursuant to these principles, it was familiar to all, that persons of this description had received grants of land for serving in your army, and had been reclaimed among your impressed seamen.

[*Legal disabilities do not destroy citizenship.*]

Now, against these facts and plain reasoning, he was aware of but one objection that had been adduced. These men are not citizens, it is said, in every State; because in nearly all, if not in every State, they are, or have been, made liable to certain disabilities not common to the free white citizens. All the arguments on this point, however diversified, and the immensely voluminous citations from the statute books of the different States, terminated in this one objection. The soundness of this single foundation stone, and that alone, he would examine.

His first answer was, that a class of citizens may, under certain circumstances, be subjected to particular disqualifications without being thereby disfranchised. In every country, women and minors are subject to disqualifications—the former to such as are perpetual. In some, large classes are debarred from the power of electing, or being elected to office. An unjust government may create many odious distinctions between its privileged orders and other citizens. The right of protection in life, liberty, and property; of residence and of inheritable blood: of taking and transmitting, by descent, lands and chattels, may all be unimpaired, and while they remain so it is impossible to say that a man ceases to be a citizen. If a State were impowered by its constitution to restrain its citizens from wearing arms, or killing game, or discharging certain civil or political functions, laws made pursuant to such authority would not operate an extinguishment of the rights of the citizen, hateful and oppressive as they would be in themselves.

Modifications of the rights of citizenship were familiar to the laws of Rome, prior to the time of Justinian; and, in fact, most of the distinctions of the privileged orders in modern governments, when fairly examined, may be referred to the same principles, and are neither more nor less than rights of citizenship differently graduated. Believing, therefore, in the correctness of this exposition, he considered all arguments drawn from the laws of the several States, respecting free persons of color, to be entirely irrelevant to the subject, unless it could be made manifest that these laws had not merely been confined to a limitation of their political or civil privileges, but had entirely annulled all that portion of them which were essential to constitute the relation of citizen. In no State had they yet, he contended, been carried to this extreme. And while any one of them could be found, in whose jurisdiction these persons were citizens, it would follow that they could not be disentitled to become citizens in any other State.

CHARLES PINCKNEY, OF SOUTH CAROLINA.

Extract from his Speech, in Congress, on the Missouri Question.

[*Value of the colored population*]

Among the reasons which induce me to rise, one is to express my surprise at the assertion I heard on both floors of Congress, that in framing the federal constitution the *non*-slaveholding States have made a great concession to the Southern, in granting them a representation of *three-*

fifths of their slaves. They say it was wrung from them to preserve the Union.

This is a great and unpardonable error—unpardonable, because it is a wilful one. The concession on that occasion was from the Southern, and not the Northern States. I can prove that they have not even the shadow of a right to complain—that they are as fully represented as they ought to be, while we, the Southern members, are unjustly deprived of any representation for a large and important part of *our* population, more valuable to the Union, as can be shown, than any equal number of inhabitants in the Northern and Eastern States can, from their situation, climate, and productions, possibly be.

At the commencement of our revolutionary struggle with Great Britain, all the States had this class of people. The New England States had numbers of them; the Northern and Middle States had still more, although less than the Southern. They all entered into the great contest with similar views. Like brethren, they contended for the benefit of the whole, leaving to each the right to pursue its happiness in its own way. They thus nobly toiled and bled together, really like brethren. And it is a remarkable fact, that, notwithstanding in the course of the revolution, the Southern States were continually overrun by the British, and that every negro in them had an opportunity of running away, yet few did. They then were, as they still are, as valuable a part of our population to the Union as any other equal number of inhabitants. They were in numerous instances the pioneers, and in all, the laborers of your armies. To their hands were owing the erection of the greatest part of the fortifications raised for the protection of our country. Fort Moultrie gave, at an early period of the inexperience and untried valor of our citizens, immortality to American arms. And in the Northern States numerous bodies of them were enrolled, and fought side by side with the whites the battles of the revolution.

Free colored persons are citizens according to the following resolution of the legislature of Vermont, communicated to the Senate of the United States, Dec. 9, 1820, by Hon. Mr. *Tichenor*.

VERMONT RESOLUTION.

Resolved, That this legislature views with regret and alarm the attempt of the inhabitants of Missouri to obtain admission into the Union, as one of the United States, under a constitution which legalizes and secures the introduction and continuance of slavery; and also contains provisions to prevent freemen of the United States from emigrating to, and settling in Missouri, on account of their origin, color, or features, and that in the opinion of this legislature, these principles, powers, and restrictions, contained in the reputed constitution of Missouri, are anti-republican, and repugnant to the constitution of the United States, and subversive of the inalienable rights of man.

Niles's Register, Dec. 16, 1820, vol. xix. p. 252.

NEW YORK RESOLUTION.

The testimony of the assembly of New York, contained in a resolution passed Nov. 20, 1820, by a vote of a 117 to 4, is in the following words, viz. : "That if the provisions contained in any proposed constitution of a new State, deny to any citizens of the existing States the privileges and immunities of citizens of such new State, that such proposed constitution should not be accepted or confirmed, the same in the opinion of this legislature being void by the constitution of the United States, and that our senators and representatives in Congress use their utmost exertions to prevent the acceptance and confirmation of such constitution.

See *Assembly's Journal*, 1820, p. 45.

HEZEKIAH NILES, OF BALTIMORE.

This venerable gentleman in speaking of the Missouri question says : It is expressly provided (*Art.* iv. *Sec.* 2, *clause* 1) by the constitution of the United States, "that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." This is a very simple, plain, and imperative sentence. Free blacks and mulattoes are citizens in all the States, I believe, east of the Delaware, as well as in the States northwest of the river Ohio, and they cannot be dispossessed of the right to locate themselves where they please.

The constitution of the United States equalizes the privileges of the citizens of the States, without respect to color, or the countries from whence they may be derived. This principle must be maintained. The few free blacks and mulattoes in the United States are not to be considered. * * * It is the disfranchisement of citizens who are citizens, and cannot be disfranchised. Shall we open the door to what may become the foulest proscriptions?

Niles' Register, Oct. 21, and Nov. 4, 1820, vol. xix. pp. 113, 146.

See the opinion of Abraham Van Vechten, Esq., of New York, page 18 (*c*) of this work.

GENERAL JACKSON'S PROCLAMATIONS.

General Jackson, in his celebrated proclamations to the free colored inhabitants of Louisiana, uses these expressions : "*Your* WHITE fellow-citizens;"—and again: "*Our* brave *citizens are united*, and *all* contention has ceased *among them*." Now, to turn language employed as this was for a special object and without premeditation, into a ground of inference, to establish or defeat a particular doctrine or theory, would, it is true, in the absence of other testimony, be rather slight and inconclusive ; but in this case, as far as it goes, and especially as taken in connexion with other proof, it strongly affirms the citizenship of the free colored people ; for surely, if *white* men are *fellow*-citizens

with free colored men, as the general's language implies, free colored men themselves must needs be citizens.

FIRST PROCLAMATION.

(Extracts.)

Head Quarters, 7th Military District,
Mobile, September 21, 1814.

TO THE FREE COLORED INHABITANTS OF LOUISIANA.

Through a mistaken policy you have heretofore been deprived of a participation in the glorious struggle for national rights, in which your country is engaged. This no longer shall exist.

As sons of freedom, you are now called on to defend our most inestimable blessings. *As* AMERICANS, your country looks with confidence to her adopted children for a valorous support. As fathers, husbands, and brothers, you are summoned to rally round the standard of the Eagle, to defend all which is dear in existence.

Your country, although calling for your exertions, does not wish you to engage in her cause without renumerating you for the services rendered.

In the sincerity of a soldier, and in the language of truth, I address you. To every noble-hearted freeman of color, volunteering to serve during the present contest with Great Britain, and no longer, there will be paid the same bounty, in money and lands, now received by the white soldiers of the United States, viz.: $124 in money, and 160 acres of land. The non-commissioned officers and privates will also be entitled to *the same* monthly pay, and daily rations, and clothes, furnished *to any American soldier.*

The major-general commanding will select officers for your government from YOUR WHITE FELLOW-CITIZENS. Your non-commissioned officers will be selected from yourselves.

Due regard will be paid to the feelings of freemen and soldiers. As a distinct, independent battalion or regiment, pursuing the path of glory, you will, undivided, receive the applause and gratitude of *your* countrymen.

ANDREW JACKSON,
Major-General Commanding.

Niles's Register, Dec. 3, 1814, vol. vii. p. 205.

SECOND PROCLAMATION.

TO THE FREE PEOPLE OF COLOR.

SOLDIERS!—When on the banks of the Mobile I called you to take up arms, inviting you to partake the perils and glory of your *white fellow-citizens*, I expected much from you; for I was not ignorant that you possessed qualities most formidable to an invading enemy. I knew with what fortitude you could endure hunger and thirst, and all the fatigues of a campaign. I knew well how you loved your native country, and that you, as well as ourselves, had to defend what *man*

holds most dear—his parents, wife, children, and property. You have done more than I expected. In addition to the previous qualities I before knew you to possess, I found among you a noble enthusiasm which leads to the performance of great things.

Soldiers!—The President of the United States shall hear how praise-worthy was your conduct in the hour of danger, and the representatives of the American people will give you the praise your exploits entitle you to. Your General anticipates them in applauding your noble ardor.*

* *Note.*—In regard to the services of free men of color in the war of the revolution, it is much to be regretted that, at an earlier period, when greater numbers of them were yet living, when better means and opportunities of investigation existed than at present, the attempt was not made to preserve a record of their services and sufferings.

It is not easy to estimate how much of the retrograde movements now seen in the free States, on the subject of their rights, and of hardness and indifference of feeling towards them, are owing to this very cause. Were the generation now on the stage as well acquainted with the worth and services of colored men as were their fathers of the revolution, these unhappy departures from the principles of that period, which so many have been pained to witness, would hardly have transpired.

[*Services of colored men in the revolution.*]

A gentleman of Philadelphia, (*a*) informed the compiler of this work, that he remembered well when Lord Cornwallis was overrunning the South, when thick gloom clouded the prospect; then Washington hastily gathered what forces he was able and hurried to oppose him; and I remember, said he, for I saw them, when the regiments from Rhode Island, Connecticut, and Massachusetts marched through Philadelphia, that one or two companies of *colored* men were attached to each.

The same gentleman says, that the vessels of war of that period, were all, to a greater or less extent, manned with colored men. On board the "Royal Louis," of 26 guns, commanded by Capt. Stephen Decatur, senior, there were twenty colored seamen. That the "Alliance," of 36 guns, commanded by Commodore Barry—the "Trumbull," of 32 guns, commanded by Capt. Nicholson, and the ships "South Carolina," "Confederacy," and the "Randolph," each were manned in part with colored men.

The same gentleman says, that he enlisted under Capt. Decatur, of the "Royal Louis," on the second cruise was taken prisoner, and shortly after was confined on board the old Jersey Prison Ship, where he remained a prisoner for seven months.

These are some of the services of citizens of color. The generation who knew them have passed away, and separated as they now are by prejudice from the notice of the whites, too few either know or care to preserve the memory of them.

[*In the late War.*]

The same gentleman further stated, that during the late war, after Washington city had been burnt by the British, and when all our seaboard cities felt the importance of erecting suitable defences, and that too without delay, that the committee of vigilance of Philadelphia, called upon the inhabitants of the city to turn out to the work—that the same committee waited upon Rev. Richard Allen, Rev. Absalom Jones, and my informant, in behalf of the people of color, to request them to take hold, which they did with alacrity and enthusiasm. Twenty-five hundred were soon assembled in the State House yard, and from thence marched to Grey's Ferry, and labored almost without intermission for two days, to erect a suitable defence at that point. So faithful and efficient were their labors—such cheerfulness, perseverance, and good order prevailed, that the committee were pleased to give a written expression of their approbation and thanks.

So also he told me there was a battalion of colored men enlisted and organized in Philadelphia, under the command of Major Bazo, of the United States' army, and were about being ordered to the frontier, when peace was proclaimed.

Note.—(*a*) James Forten, senr.

The enemy approaches, his vessels cover our lakes, *our brave citizens are united,* and all contention has ceased among them. Their only dispute is, who shall win the prize of valor, or who the most glory, its noblest reward. By order,

THOMAS BUTLER, *Aid-de-Camp.*

But there are, if we look for them, evidences of the worth of these people of a different character.

[*Their services in the yellow fever of '93.*]

In the autumn of 1793 the yellow fever broke out in Philadelphia, with peculiar malignity. The insolent and unnatural distinctions of caste were overturned, and the people called colored were solicited in the public papers to come forward and assist the perishing sick. The same month which had gloried against them in its prosperity, in its overwhelming adversity implored their assistance. The colored people of Philadelphia nobly responded. The then mayor, Matthew Clarkson, received their deputation with respect, and recommended their course. They appointed Absalom Jones and Wm. Gray to superintend it, the mayor advertising the public that by applying to them aid could be obtained. This took place about September.

Soon afterwards the sickness increased so dreadfully, that it became next to impossible to remove the corpses. The colored people volunteered this painful and dangerous duty—did it extensively, and hired help in doing it. Dr. Rush instructed the two superintendents in the proper precautions and measures to be used.

A sick white man crept to his chamber window, and entreated the passers-by to bring him a drink of water. Several white men passed, but hurried on. A foreigner came up—paused—was afraid to supply the help with his own hands, but stood and offered eight dollars to whomsoever would. At length a poor black man appeared; he heard—stopped—ran for water—took it to the sick man—and then staid by him to nurse him, steadily and mildly refusing all pecuniary compensation.

Sarah Boss, a poor black widow, was active in voluntary and benevolent services.

A poor black man, named Sampson, went constantly from house to house giving assistance everywhere gratuitously, until he was seized with the fever and died.

Mary Scott, a woman of color, attended Mr. Richard Mason and his son so kindly and disinterestedly, that the widow, Mrs. R. Mason, settled an annuity of six pounds upon her for life.

An elderly black nurse, going about most diligently and affectionately, when asked what pay she wished, used to say, "a dinner, massa, some cold winter's day."

A young black woman was offered any price, if she would attend a white merchant and his wife. She would take no money, but went, saying that if she went from holy love she might hope to be preserved—but not if she went for money. She was seized with the fever, but recovered.

A black man riding through the streets, saw a white man push a white woman out of the house. The woman staggered forward, fell in the gutter, and was too weak to rise. The black man dismounted, and took her gently to the hospital at Bush-hill.

Absalom Jones and Wm. Gray, the colored superintendents, say, "A white man threatened to shoot us if we passed by his house with a corpse; we buried him three days afterwards."

About twenty times as many black nurses as white, were thus employed during the sickness.

The following certificate was subsequently given by the mayor:—

"Having, during the prevalence of the late malignant disorder, had almost daily opportunities of seeing the conduct of Absalom Jones and Richard Allen, and the people employed by them to bury the dead, I with cheerfulness give this testimony of my approbation of their proceedings, as far as the same came under my notice. The diligence, attention, and decency of deportment, afforded me at the time much satisfaction." (*Signed*) MATTHEW CLARKSON, *Mayor.*

Philadelphia, Jan. 23, 1794.

PRUDENCE CRANDALL'S CASE.

There are but few who have not heard of the noble attempt of this lady to afford instruction to young women of color; and of the prosecutions to which she was subjected on account of it. In this case, as in the Missouri question, the citizenship of free persons of color was a turning hinge. A notice, therefore, of that subject, without suitable reference to this case, would be imperfect. The account here given, is an abridgement of the sketch found in "Jay's Inquiry;" and we introduce it by simply saying, that the inquiry of Hezekiah Niles, "Shall we open the door to what may become the foulest proscriptions?" ! ! put by him as a comment on the Missouri question, was most sagacious. If, at that time, he had had the scenes of Canterbury full before his mental vision it could not have been more appropriate.

[*From Jay's Inquiry.*]

PROCEEDINGS IN CANTERBURY.

There are occasions on which it is treason to truth and honor, if not to religion, to suppress our indignation; and while we shall scrupulously adhere to truth in relating the measures pursued in Connecticut, to prevent the education of a certain class of colored persons, we shall not shrink from a free expression of our opinions of those measures, and of their authors.

Miss Crandall, a communicant in the Baptist church, and, as we believe, a lady of irreproachable character, had for some time been at the head of a female boarding school, in the town of Canterbury, Connecticut, when in the autumn of 1832 a pious colored female applied to her for admission into her school, stating that she wanted "to get a little more learning—enough, if possible, to teach colored children." After some hesitation, Miss Crandall consented to admit her, but was soon informed that this intruder must be dismissed, or that the school would be greatly injured. This threat turned her attention to the cruel prejudices and disadvantages under which the blacks are suffering, and she resolved to open a school *exclusively* for colored girls. It has been thought expedient to doubt the philanthropy of this resolution; but had not the moral sense of the community been perverted, this attempt to instruct the poor, the friendless, and the ignorant, would have met with applause instead of contumely. She discontinued her school, and in February, 1833, gave public notice of her intention to open one for colored girls. This notice excited prodigious commotion in the town of Canterbury. That *black* girls should presume to learn reading, and writing, and music, and geography, was past all bearing. A legal town meeting was summoned to consider the awful crisis. At this meeting resolutions were passed expressing the strongest disapprobation of the proposed school.

The resolutions of the town meeting, as became so grave a matter, were communicated to Miss Crandall by the "civil authority and selectmen;" but that lady stood firm,—she refused to retreat from the ground she had taken.

Some means more efficacious than the fulminations of a town meeting were, therefore, next to be tried. Foiled in their attempts to persuade or intimidate, they now resolved on coercion. On the first April, another town meeting was convened, at which it was "Voted, that a petition in behalf of the town of Canterbury, to the next general assembly, be drawn up

in suitable language, deprecating the evil consequences of bringing from *other towns* and other States, people of color for *any* purpose. The malignity of this vote is equalled only by its absurdity. The desired law is, to prevent the evil of blacks passing, not only from other States, but *other towns*. Every black citizen of Connecticut is to be imprisoned in the town in which the law happens to find him, and he may not travel into the adjoining town for "any purpose."

Among the pupils of Miss Crandall, was a colored girl about seventeen years of age, who had come from Rhode Island to enjoy the advantages of the school. The pursuit of knowledge under discouraging difficulties has rarely failed to excite applause; and the virtuous struggles of the poor and obscure to improve and elevate themselves, claim the sympathy of Christian benevolence. In the present instance, we behold a youthful female, of a despised and depressed race, attempting to emerge from the ignorance and degradation into which she had been cast by birth; and abandoning her home and friends, and travelling to another State, applying for instruction to the only seminary in the whole country open to receive her. And now let us see what sympathy this poor and defenceless, but innocent and praiseworthy girl, experienced. On the day after her arrival, she was ordered by the selectmen to leave the town. This order, as illegal as it was inhuman, was disregarded; and on the 22d April, Mr. Judson and his fellow functionaries instituted, on behalf of the town, a suit against her, under an old vagrant act of Connecticut, and a writ was issued to the sheriff, to require her appearance before a Justice of the Peace. The writ recited, that according to the statute she had forfeited to the town $1.62 for each day she had remained in it, since she was ordered to depart; and that in default of payment, she WAS TO BE WHIPPED ON THE NAKED BODY NOT EXCEEDING TEN STRIPES, unless she departed within ten days after conviction. The barbarous and obsolete law under which this suit was brought, was intended to protect towns from the intrusion of paupers who might become chargeable. The friends of the school had offered to give the selectmen bonds to any amount, to secure the town from all cost on account of the pupils; and of course this suit was a wicked perversion of the law, and the plaintiffs ought to have been indicted for a malicious prosecution under color of office. With equal propriety might the civil authority of New Haven warn a student in Yale College from New York to leave the city, and on his refusal, order him to be whipped on the naked body as a vagrant pauper.

[*Act of Connecticut legislature.*]

About the time of the return of this writ, the legislature of Connecticut assembled, and a law was passed to suppress the school, and all others of a similar character. Its preamble declared, that "attempts have been made to establish literary institutions in this State for the instruction of colored persons belonging to other States and countries, which would tend to the *great increase* of the colored population of this State, and thereby to the *injury* of the people." The act provides, that every person who shall set up or establish any school, academy, or literary institution, for the instruction or education of colored persons who are not inhabitants of Connecticut, or who shall teach in such school, or who shall board any colored pupil of such school, not an inhabitant of the State, shall forfeit one hundred dollars for the first offence, two hundred dollars for the second, and so on, doubling for each succeeding offence, unless the consent of the civil authority and selectmen of the town be previously obtained.

The attempt to enforce the whipping law, reminded the legislature of the

propriety of abolishing that relic of barbarism, and it was accordingly repealed, and thus were the backs of Miss Crandall's pupils saved from the threatened laceration.

It is painful and mortifying to reflect on the law obtained for the suppression of the school, and which has very generally received the title of "THE CONNECTICUT BLACK ACT." It is an act alien to the habits, the character, the religion of Connecticut. It is an act which neither policy nor duty can vindicate. It is an act which will afford its authors no consolation in the prospect of their final account, and which their children will blush to remember.

As to the sincerity of the apprehensions felt by the legislature, let it be recollected, that the law is intended to prevent the *ingress* of such blacks *only* as might come for the honorable and virtuous purpose of education, while not the slightest impediment is opposed to the introduction of cooks, waiters, scullions, shoeblacks, &c., in any number. The *best* are excluded, the *worst* freely admitted.

No sooner was the passage of the Black Act known in Canterbury, than this triumph over justice, humanity, and constitutional liberty, was celebrated by a *feu de joie*, and the ringing of bells. Miss Crandall was prosecuted under it, and being unable to procure bail, was committed to PRISON. The next day bail was obtained, and she returned to her school. Well, indeed, might the public press, with some memorable exceptions, execrate the Black Act; and well, indeed, might Mr. Judson feel impatient under the obloquy that was falling upon him, as the chief instigator and manager of the prosecution.

TRIAL OF MISS CRANDALL.

On the 23d of August, Miss Crandall was brought to trial. The *crime* with which she was charged was fully proved. One of the witnesses testified: "The school is usually opened and closed with prayer; the Scriptures are read and explained in the school daily; portions are committed to memory by the pupils, and considered part of their education.

Andrew T. Judson, Esq., opened the case on the part of the prosecution, and to this gentleman, it is believed, belongs the distinction of having been the first man in New England to propound publicly the doctrine, that free *colored* persons are not citizens. This doctrine was essential to the validity of the Black Act, since, by the federal constitution, citizens of one State are entitled to all the privileges of citizenship in every other State; and the Act prohibited colored persons from other States from going to school in Connecticut, a prohibition palpably unconstitutional, if free blacks are citizens. The presiding Judge submitted the cause to the jury without comment; and some of them having scruples about Mr. Judson's new doctrine, refused to agree in a verdict of guilty, and a new trial was consequently ordered.

In the ensuing October, Miss Crandall was again placed at the bar, while Judge Daggett took his seat on the bench.

REVIEW OF JUDGE DAGGETT'S OPINION.

BY W. A. JAY, ESQ.

Rarely has any Judge enjoyed such an opportunity of defending the poor and fatherless, of doing justice to the afflicted and needy, of delivering the spoiled out of the hand of the oppressor. The merits of the cause turned on the simple question, whether free colored persons are citizens or not.

We might have presumed that a judge, aware of his solemn responsibility, would have prepared himself for the decision of this momentous question, by the most patient and thorough research. On the opinion he might pronounce, would perhaps rest the future education, comfort, freedom, and not unlikely, everlasting happiness of multitudes of his fellow men. Under such circumstances, the public had a right to expect that he would resort to every source of information; that he would consult the opinions of eminent statesmen and jurists, investigate the constitutional history of the rights of these people; study the proceedings of Congress in relation to them, and bring together such a mass of facts, such an array of arguments, as would prove that his decision, whatever it might be, was the result of conscientious inquiry, and that the bench was elevated far above the prejudices and passions which had brought to the bar an innocent and benevolent female.

The judge, in his charge, expresses himself in the following words:* "Are the free people of color citizens? I answer no." The grounds on which this answer is given, appear to be the following:

1st. "They are not so styled in the constitution of the United States. In that clause of the constitution which fixes the basis of representation, there was an opportunity to have called them citizens, if they were so considered. But that makes free *persons* (adding three-fifths of all other persons) the basis of representation and taxation."

The words of the constitution referred to by the judge, are, (Art. 1, Sec. 2,) "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

Now, it seems, free *colored* persons cannot be citizens, because they are not in this section so called; but unfortunately, free *white* persons are not called citizens, and they also must therefore be disfranchised! Apprentices ("those bound to service for a term of years,") are likewise included among free *persons*, and they also cannot be citizens!

Had free *white* persons been spoken of as *citizens*, and free *black* persons only as "persons," then indeed there would have been some force in the judge's first reason; but as there is not the slightest reference in the constitution to the complexion of the "free persons," we cannot understand the argument, and proceed, therefore, to his

2d reason. "They (free negroes) are not so styled, (citizens,) so far as I am aware, in the laws of Congress, or of any of the States."

It would thus seem that men with *black* skins cannot be citizens, unless the laws expressly declare them to be so. So far as we are aware, men with *red* hair are not styled citizens in the laws of Congress, or of any of the States.

3d reason. "His Honor then read from *Kent's Commentary*, vol. ii. p. 210, a note in which the commentator speaks of the degraded condition of the blacks, and the disabilities under which they labor, and thence *inferred* that, in Kent's opinion, they were not citizens."

Had the judge found it convenient to consult the *text* of this learned and independent jurist, the following passage would have saved him the trouble of drawing an inference.

"The article in the constitution of the United States, declaring that citizens of each State were entitled to all the privileges and immunities of

* *Note.*—We quote from a newspaper report of the charge, and have no knowledge that the accuracy of the report has ever been denied.

citizens in the several States, applies to natural born or duly naturalized citizens, and if *they* remove from one State to another, they are entitled to the privileges that persons of the *same description* are entitled to in the State to which the removal is made, and to none other. If, therefore, for instance, free persons of color are not entitled to vote in Carolina, free persons of color emigrating there from a Northern State would not be entitled to vote." Here is an express admission of the citizenship of free colored persons, and their case is cited to illustrate the rights of *citizens* under the federal constitution. If a free black, according to the Commentary, moving from one State to another, is, under the federal constitution, entitled only to such privileges as the free blacks in the latter State enjoy, it follows irresistibly that he *is entitled* to such privileges as the free blacks do there enjoy. Now, the free blacks of Connecticut enjoy a legal right to go to school, and to *any* school that will receive them; hence, according to Chancellor Kent, a free black removing from another State into Connecticut has the same right, and hence the Black Act is plainly and palpably unconstitutional.

4th. "Another reason for believing that people of color are not considered citizens, is found in the fact, *that when the United States Constitution was adopted, every State except Massachusetts tolerated slavery.*"

Why a *free* black man cannot be a citizen, because another black man is a slave, is a problem we confess ourselves unable to solve.

Such are the arguments, and the only ones, adduced by the judge, to support his portentous decision—a decision which tends to strip the free negro of his property and rights; renders him an alien in the land of his birth; exposes him to contumely and oppression, and prepares the way for his forcible deportation to the shores of Africa.

In order to do full justice to Judge Daggett, it may be proper to notice his answers to objections, since these answers may perhaps be regarded as negative arguments. To the assertion that free blacks own vessels which participate in the peculiar privileges of American shipping, and that they sue in the United States courts, he simply replied, that these claims have never been settled by judicial decisions. To the argument that free blacks may be guilty of high treason, he replied, "So may any person who resides under the government, and enjoys its protection, if he rises up against it."

Having thus fairly stated the judge's arguments, we will now take the liberty of presenting a few *facts* having an important bearing on this question; facts, be it remembered, that were accessible to the judge, had he thought it worth while to look for them.

By the fourth of the "Articles of Confederation," it was provided, that "the *free inhabitants* of these States shall be entitled to all the privileges and immunities of free citizens in the several States." While these articles were under consideration in Congress, it appears from the journals that, on the 25th June, 1778, "the delegates from South Carolina moved the following amendment *in behalf of their State*—'In article fourth, between the words free inhabitants, insert WHITE.' Passed in the negative—Ayes, two States; Nays, eight States—one State divided." Here then was a solemn decision of the revolutionary Congress, that free negroes should be entitled to all the privileges and immunities of free citizens in the several States. Judge Daggett thinks that the constitution of the United States did not regard free blacks as citizens, because in 1788 all the States, with one exception, tolerated slavery; yet in 1778, Congress decided *free* blacks were citizens, although all the States, *without one exception*, tolerated slavery. Nor was this decision an unmeaning vote, for in compliance with its spirit,

when Congress, on the 18th April, 1783, proposed to substitute population for property, as the rule for the contributions of the several States to the continental treasury, the expression used in the ordinance was, "The whole number of *white* and *other* free CITIZENS." This ordinance was sent to the legislatures of the several States for their sanction, and there is no evidence that in any one of them exception was taken to this formal, and, as it would seem, superfluous recognition of the citizenship of the free negroes. In 1788 the present constitution was formed, and the clause respecting citizenship in the several States was transferred to it from the articles of confederation, with slight verbal alterations.

That the clause embraced free negroes, at the time it was transferred, was settled by the vote we have quoted—no words were added to exclude them; no intimation was given that the new constitution was disfranchising thousands, and tens of thousands, who Congress had declared were invested with all the rights and immunities of free citizens. No desire was expressed to disfranchise these people, and in the debates on the constitution, this disfranchisement was never alluded to, either in the language of praise or of censure,—and for more than forty years after the adoption of the constitution, no suspicion existed that it had divested the free blacks of the citizenship they enjoyed under the confederation, till the discovery was made by Mr. Judson, the agent and orator of the Windham Colonization Society, and juridically announced by the Vice President of the New Haven Colonization Society.

The inspectors of election for the town of Greenfield, Pennsylvania, had probably heard of the decision of the Connecticut chief justice, and at the election in 1836 they refused to receive the vote of a certain individual, on account of the supposed uncitizen-like color of his skin. The individual sued the inspectors. From the report of the trial, the arguments on behalf of the defence seem to have been imported from Canterbury. The court, however, instructed the jury, that "free negroes and mulattoes were CITIZENS within the meaning of the constitution and laws of Pennsylvania," and a verdict was given for the plaintiff.

Judge Daggett "*is not aware that free blacks are styled citizens in the laws of Congress, or of any of the States!*" How laborious has been his search for such laws, we shall now see. Probably the judge will admit that, when the laws speak of *male* citizens, they recognise the existence of *female* citizens; and most judges would admit, that where the law speaks of *white* citizens, they recognise the existence of citizens who are *not white*.

The act of Congress of 1792, for organizing the militia, provides for the enrolment of "free *white male* citizens."

The act of Congress of 1803, "to prevent the importation of certain persons into certain States, when by the laws thereof their admission is prohibited," enacts that masters and captains of vessels shall not "import or bring, or cause to be imported or brought, *any negro, mulatto, or other person of color*, not being a native, a *citizen*, or registered seaman of the United States," &c.

The constitution of Judge Daggett's own State, limits the right of suffrage to "free *white male* citizens." Why *male* citizens, if there are no *female* citizens; and why *white* citizens, if there can be no *colored* ones? Seven or eight State constitutions, in the same manner, recognise the existence of *colored* citizens. Had the judge extended his inquiries into State laws, to those of Massachusetts, he would have found one prohibiting any negro, "other than a CITIZEN of the United States," or a subject of the Emperor of Morocco, from tarrying in the commonwealth longer than two months.

Had he taken the trouble to consult the statute book of New York, he would have found the following clause in the act relative to elections, viz.. "If the person so offering to vote be a *colored* man, the following oath shall be tendered to him—'You do swear (or affirm) that you are of the age of twenty-one years, that for three years you have been *a* CITIZEN OF THIS STATE,'" &c.—*Revised Statutes*, I. 134.

Had the judge condescended to look into the debates of the New York Convention of 1821, on the question of admitting the free blacks to the right of suffrage, he would have discovered, to his astonishment, that the New York lawyers and judges had no hesitation in admitting these people to be citizens, whatever might be their objections to permitting them to vote. He would have found Chancellor Kent earnestly contending for their rights to citizenship in other States, under the federal constitution. He would have found Rufus King, (no mean authority,) concluding an argument in their behalf, with these words:—"As certainly as the children of any white man are citizens, so certainly the children of the black man are citizens."

Had the judge opened the constitution of the State of New York, he would have met with a clause in the article respecting the elective franchise, declaring, "No man of color, unless he shall have been three years a CITIZEN OF THIS STATE," &c.

On the 4th of September, 1826, Governor Clinton, of New York, addressed a letter to the President of the United States, demanding the immediate liberation of Gilbert Horton, a colored man, as "A CITIZEN of this State," he having been imprisoned in Washington as a fugitive slave.*

In every State in the Union, we believe without one exception, a native free born negro may legally take, hold, and convey real estate. Will Judge Daggett deny this to be an attribute of citizenship?† Will he maintain that any but citizens may exercise the right of suffrage? But in eight or ten States, free negroes may legally vote. True it is, that in others this privilege is denied to them, but it is not true that none are citizens who cannot vote. The act of Congress respecting naturalization provides that, in a certain case, the *widow* and *children* of a deceased alien "shall be citizens of the United States."

Impressed colored sailors have been claimed by the national government as "citizens of the United States."

DE WITT CLINTON'S LETTER.

*. *Note.*—(*a*) The following is a copy of the letter of *De Witt Clinton*, Governor of New York, to *John Q. Adams*, President of the United States, in the case alluded to.

Albany, 4th September, 1826.

SIR, I have the honor to inclose copies of the proceedings of a respectable meeting of inhabitants of West Chester county, in this State, and of an affidavit of John Owen, by which it appears that one *Gilbert Horton*, a *freeman of color*, and a CITIZEN of this State, is unlawfully imprisoned in the jail of the city of Washington, and is advertised to be sold by the Marshal of the District of Columbia. From whatever authority a law authorising such proceedings may have emanated, whether from the municipality of Washington, the legislature of Maryland, or the Congress of the United States, it is, at least, void and unconstitutional in its application to A CITIZEN, and could never have intended to extend further than to fugitive slaves. As the District of Columbia is under the exclusive control of the national government, I conceive it my duty to apply to you for the liberation of Gilbert Horton, as *a freeman* and *a citizen*, and feel persuaded that this request will be followed by immediate relief. I have the honor to be, &c.,

DE WITT CLINTON.

To the President of the United States.

† Real estate in the city of New York, to the value of $50,000, was lately devised to a free colored man in that city, but, according to the Judge, he is not a citizen, and of course cannot take by devise. If so, the property must go to the heir at law, or escheat to the State.

(*a*) Added by the compiler.

Colored men going to Europe have received passports from the department of State, certifying that they were citizens of the United States.*

The proposed constitution of the new State of Missouri required the legislature to pass such laws as might be necessary "to prevent free negroes and mulattoes from coming to settle in the State, under any pretext whatever." The legislature of New York, in reference to this provision, on the 15th November, 1820, "Resolved, if the provisions contained in any proposed constitution of a new State deny to any CITIZENS of the existing States the privileges and immunities of citizens of such new State, that such proposed constitution should not be accepted or confirmed; the same, in the opinion of this legislature, being void by the constitution of the United States." This resolution was adopted in high party times, by an almost unanimous vote.

The constitution being submitted to Congress, the article excluding colored citizens was deemed by the House of Representatives a violation of the national compact, and that body refused to receive Missouri into the Union. A compromise was at last agreed to, and Congress admitted Missouri on the express condition that the offensive clause in her constitution should never authorize any law by which *any citizen* of any of the States should be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled by the constitution of the United Sates; and that the legislature of Missouri should by a solemn act declare their assent to this condition. The legislature passed the act required, and *thereupon* the State became a member of the Union. Yet Judge Daggett is not aware of any act of Congress recognising free blacks as citizens!

* *Note.*—(*a*) The following circumstance is related in a letter from the Rev. A. A. Phelps, dated May 24th, 1834, to Wm. Goodell:

On Tuesday evening I took tea at Mr. Forten's [a well known manufacturer and merchant of Philadelphia—a man of color] in company with brothers Leavitt, Pomeroy, and Dr. Lansing. It was a very pleasant interview, and not the least pleasant thing about it is the following:—We were scarcely seated, before in came Robert Vaux, Esq., with a passport for Robert Purvis and wife, under the seal of the Secretary of State, certifying that the said Purvis and wife were *citizens of the United States.* Mr. Purvis is son-in-law to Mr. Forten. He was about to visit Europe for his health, and in some of the countries on the Continent, as in France, a passport is necessary, certifying who the person is, where from, &c. The application was made through Robert Vaux, Esq., and on the representation of the case by him, it was at once granted.

See *Emancipator*, June 8th, 1834, vol. ii. No. 6.

REV. PETER WILLIAMS' PASSPORT.

† The following is a copy of the passport granted to the *Rev. Peter Williams*, the respected pastor of St. Philip's church, New York, and a man of color. He visited England and France, in the years '36 and '37. The passport is headed with a beautiful impression of the *American Eagle*, and the motto "*nunc sidera ducit*"—in a scroll in his beak.

UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting.

No. 4189.

Description.—Age, 50 years; stature, 5 feet 6 inches, Eng.; forehead, high; eyes, hazel; nose, broad; mouth, ordinary; chin, pointed; hair, black; complexion, yellowish; face, round and full.

Signature of the bearer, Peter Williams. (*b*)

I, the undersigned, Secretary of State of the United States of America, hereby request all whom it may concern, to permit safely and freely to pass, Rev. Peter Williams, a CITIZEN of the United States, and in case of need to give him all lawful aid and protection.

Secretary of State's office. L. S. Given under my hand and the impression of the Seal of the Department of State, at the city of Washington, the 17th day of March, A.D., 1836, in the 60th year of the Independence of these United States.

(*Gratis.*) JOHN FORSYTH.

(*a*) Added by the compiler.
(*b*) In his own hand writing.

Such are some of the authorities and historical facts bearing on this question; and here we think we might safely submit the decision to our readers were we combatting the opinion of any ordinary man. But we cannot forget that Judge Daggett, instead of being a subordinate and uninformed magistrate, taking for granted that the law is what he is pleased to think it ought to be, is a jurist of whom his native State has long been proud; that his attainments have elevated him to the highest judicial trust in the gift of his fellow-citizens, as well as to the honorable post of professor of law in one of our most important universities. The *dictum* of such a judge will not be lightly estimated, and especially when it gratifies popular prejudice, responds to popular clamor, and tends to extort from the free negroes their "consent" to go to Africa; we will therefore trespass a little longer on the patience of our readers, for the purpose of examining the *consequences* of Judge Daggett's law.

"Are free people of color citizens? I answer no." The negative here, is founded, it will be perceived, solely on *color*. Let us see what, according to the learned judge, are *some* of the disqualifying effects of a colored skin.

1. None but citizens can by our laws hold real estate; of course, whatever houses and lands a colored man may at any time purchase, must escheat to the State.

2. Patents for useful inventions can, by act of Congress, be granted to citizens only; hence, if a man with a dark skin invents a profitable machine, he may with impunity be robbed of the fruit of his ingenuity.

3. The same restriction is found in the law of copyright.

4. No vessel can be enrolled as a coasting vessel unless owned by a citizen, and therefore a *black* man may not ply an oyster or fishing boat between New Haven and New York.

5. It is a capital crime for an American *citizen* to engage in the African (not the American) slave trade. Now, should a native of Connecticut be indicted for this crime, the question whether he should be hung, or permitted to go at large, would, according to the professor of law in Yale College, be determined by the tincture of his skin.

Surely when so many and such momentous consequences depend on complexion, it is but reasonable that the law should provide some accurate and infallible mode of testing the presence of the disqualifying color. Let us suppose a case. A copyright is pirated by a New Haven bookseller. The author brings his action before Judge Daggett, and the bookseller pleads in bar that the plaintiff is a colored man, and on this plea issue is joined. In this case the defendant would be bound to prove the truth of his plea, and we would like to know what kind of evidence his Honor would deem proper to go to the jury. Our laws and books of authorities afford us no light on this dark point. The general rule, indeed, is, that in all cases the best and highest kind of evidence shall if possible be given. Now, as the jury are on their oaths to pronounce on the complexion of the plaintiff, we should think the best evidence they could have would be that of their own eyes. But how are they to get a sight of the plaintiff? Is he bound to make a *profert* of his own face in court? Surely not, since by the laws of the land he is entitled to appear by counsel, and he may, if he pleases, be out of the country at the time of the trial. What testimony would the court regard as of the highest order next to a personal view? Shall it be *parentage?* This would lead to very delicate investigations, considering the vast number of our white citizens whose children, and whose children's children, are denominated colored. It would also be necessary, before going into this evidence, to settle the exact quantity of colored blood in a man's veins that disqualifies him from claiming literary property; we wish

our professor of law would elucidate this matter in his next course of lectures. On the whole, we suspect the defendant would be neither disposed nor prepared to enter into genealogical researches; and that he would ask leave to call witnesses as to the complexion of the plaintiff. Now it may well be questioned how far such a course would be legal. The opinions of witnesses rarely constitute testimony, since the jury are bound to form their own opinions from *facts*, instead of adopting the opinions of others. It may, moreover, be a very nice question, whether a certain individual is white or colored, and very competent judges may on this point deliver very contradictory judgments. We should naturally suppose that on this subject our Southern brethren would be infallible, and yet we have seen how narrowly a court of sessions, in South Carolina, escaped the degradation of trying a colored murderer, who had been appointed the overseer of a plantation on the supposition that he was a WHITE man.

In the name then of justice, of humanity, and of common sense, we call on Judge Daggett for a *chromametre* by which we may in all cases measure the hue of a man's skin, and ascertain whether it reaches the shade which robs a native American of his property and his rights, and renders him an alien in the land of his birth. The judge has himself made such an instrument necessary, and unless his ingenuity can invent one, his decision must be admitted to be a palpable absurdity.

Admit free negroes to be *men*, and to be *born* free in the United States, and it is impossible to frame even a plausible argument against their citizenship. The only argument on this point we have ever met with, in which the conclusion is legitimately deduced from the premises, is by a late writer,* who maintains that the negroes are a distinct race of animals. Now, it must be conceded, that the negro, *if* not *a human* being, is not a citizen. We recommend the following reasoning, to the future judicial apologists of the Black Act.

"His (the negro's) lips are thick—his zygomatic muscles large and full—his jaws large and projecting—his chin retreating—his forehead low, flat, and slanting, and as a consequence of this latter character, his eye balls are very prominent, apparently larger than those of white men. All of these peculiarities at the same time contributing to reduce his *facial* angle almost to a level with the BRUTE. If then it is consistent with science to believe, that the mind will be great in proportion to the *size and figure of the brain*, it is equally reasonable to suppose that the acknowledged meanness of the negro's intellect only coincides with the *shape of his head*; or, in other words, that his want of capability to receive a complicated education, renders it improper and impolitic that he should be allowed the privileges of CITIZENSHIP in an enlightened country." pp. 25, 26. The author is an ultra colonizationist, and the conclusion to which he arrives is, "let the blacks be removed, *nolens volens*, from among us."

We have dwelt the longer on the Connecticut decision, on account of its immense importance to a numerous class of our fellow countrymen. The victims of a cruel prejudice and of wicked laws, they especially claimed the aid and sympathy of the humane, when striving to elevate themselves by the acquisition of useful knowledge. But Judge Daggett's doctrine crushes them to the earth. If not *citizens*, they may be dispossessed of their dwellings, for they cannot legally hold real estate—they may be denied the means of a livelihood, and forbidden to buy and sell, or to practice any trade, for they are no longer protected by the constitution of the United States. Nay, they may be expelled from town to town, and from State to State, till

*Note.—The author of "Evidences against the views of the Abolitionists, consisting of physical and moral proofs of the natural inferiority of the negroes." New York, 1833.

finding no resting place for the soles of their feet, they "CONSENT" to embark for Africa.

However inconclusive we are disposed to regard Judge Daggett's arguments, they were satisfactory to the jury, and a verdict was given against Miss Crandall. The cause was removed to the Court of Errors, where all the proceedings were set aside on *technical* grounds.*

But certain of the "quiet, peaceable, humane, and inoffensive people of Canterbury," tired of the law's delay, determined on ejecting the school by a summary process, and accordingly mobbed the house by night, and smashed in the windows. And the school was abandoned.

CALVIN GODDARD, ESQ.

HIS ARGUMENT IN THE CASE OF PRUDENCE CRANDALL.

(Extracts.)

[*Introduction.*]

The questions involved in the decision of this case are of immense magnitude. It is indeed singular, that occasion has never arisen, since the existence of our constitution, in which the question, whether the free, native inhabitants of the United States were citizens, and entitled to the privileges of citizens, and been directly and judicially decided. The circumstance that no such question has arisen, is, to my mind, high evidence that their rights to the privileges of citizenship are unquestionable; for numerous occasions have arisen, in which those privileges have been exercised.

I do not come to advocate the claims of either of the great parties who are engaged in the business of emancipation.

Education lies at the foundation of both, and the adoption and execution of such laws as that against which we contend, will for ever extinguish the benevolent exertions and hopes of all.

Nor do I come to disturb or agitate the question of slavery.

But we come in behalf of *three hundred and twenty thousand* free native inhabitants of this free country in which we live—under the free and happy constitution of which we justly boast—we come to claim for them the privileges secured to us all.

We come to claim for those *born free* within the United States of America, the protection of the second section of the fourth article of the constitution of the United States, which provides "*That the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.*"

But we are told that this class of people are *not citizens.*

It becomes us then to show that the eight thousand free colored people in the State of Connecticut *are citizens.*

That they enjoy the privilege of being instructed, of being boarded for that purpose; and it will follow, as we think, that the *free colored* citizens of *other* States have the same privileges, and this without the license of any persons.

*Note.—The question of *citizenship* was not passed upon. That question, said Judge Williams, is one of the deepest interest to this community, involving the rights of a large and increasing population. But it appears that the same result must follow, if we do not examine this constitutional question, as if we decide it; for this, and for other reasons which he stated, said he, I feel no disposition to volunteer an opinion on *that* subject. He then proceeded and set aside the prosecution for *inaccuracy* in setting forth the offence complained of, *i.e.* purely on technical grounds, as is stated in the text.—10 *Con. Rep.* 366.

[*What are citizens.*]

Lexicographers have been referred to, and their definitions are very various. In *Rees' Cyclopedia*, inhabitants of a city, vested with the freedom and rights thereof. It was a term used in the ancient republics, to designate inhabitants of a republic with more or less privileges. The title and privileges were acquired in different ways: *birth*, however, conferred the title.

St. Paul, to prevent being scourged, in reply to the query of the centurion, said, "But I was *free born!*"

The term *citizen*, is, under a republican government, what the term *subject* is under a monarchy: it embraces high and low—rich and poor—male and female—white and colored—a general term which includes the whole republican family—all who are free and live under the same government, and owe to it permanent allegiance—subject to its duties—entitled to its privileges.

But whatever may be the import of the term *citizen* elsewhere, how is it used in the United States? in this State? in our constitution? in the constitution and laws of the United States?

[*How made citizens in Connecticut.*]

How were citizens *made* here? I answer, *out of subjects of the king of Great Britain.*

Our ancestors fled from England to obtain and secure their liberties—liberty of conscience—to enjoy their religion. But they fled from a country where liberty was protected by law, and where, as is said in *Black. Com.* vol. i. p. 125, *Christian's Notes*, "every wanton or causeless restraint of the will of the subject, whether practised by a monarch, a nobility, or a *popular assembly*, is a degree of tyranny." Page 127, "This spirit of liberty is so deeply implanted in our constitution, that a *negro*, the moment he lands, is under the protection of our laws, and becomes *a freeman.*"

And in a note to p. 425, he says, "*Liberty*, by the English law, depends not on *complexion.*"

Our ancestors, when they came to this country, black or white, were subjects of the king of Great Britain—entitled to all the privileges of the *habeas corpus* act, which there made colored people FREEMEN. The people of Connecticut came to this country with a charter in their hands, which is found in our edition of the *Statutes* of 1808, p. 5, and which declares that

"Our will and pleasure is, and we do, for us, our heirs, and successors, ordain, declare, and grant unto the said governor and company, and their successors, that all and every the subjects of us, our heirs, or successors, which shall go to inhabit within the said colony, *and every of their children which shall happen to be born there*, or on the seas in going thither, or returning from thence, shall have and enjoy all the liberties and immunities of free and natural subjects within any the dominions of us, our heirs, or successors, to all intents, constructions, and purposes whatever, as if they and every of them were born within the realm of England."

These privileges were not only secured to every *inhabitant* there, but to every such person as shall be *free* of said colony. It gave full power and authority, from time to time, "to take, ship, and carry there, such of our loving subjects and *strangers* as shall or will accompany them into said colony;" and it was declared that "those liberties and immunities shall be enjoyed by all who *shall happen to be born there.*"

Here then we find the *materials* from which *citizens of Connecticut were made.*

[*Rights of citizens.*]

Let us next see whether, in our struggle for liberty and independence, we lost these principles,—whether they have been denied to those to whom they were granted.

This charter, granted in 1662, continued to contain the principles of the government of Connecticut, until after the declaration of independence. The first meeting of the legislature of Connecticut, was held in the month of October, following, (1776.)

It was then declared that the ancient form of civil government, contained in the charter from Charles II. king of England, *and adopted by the people of this State*, under the sole authority thereof, shall be and remain the tried constitution of this State. Under this constitution the people of Connecticut lived till the adoption of the present constitution in 1818.

Has that constitution abandoned the rights and privileges for which we contend?

Art. 1, Sec. 1, declares that "all men, when they form the social compact, are *equal in rights*." Will it be said that colored men did not *form* the social compact, because not voters, and therefore not citizens?

This will prove too much, because it will exclude minors, females, and a great class of persons now, and many more then, who are and were not voters—qualifications in point of property being then here, as well as now in many of the States, necessary to the exercise of the elective franchise.

There were other citizens who were and are not voters, whose rights and privileges are secured by the constitution—they may be white, or black, or colored people.

Sec. 5. "Every citizen may freely speak, write, and publish his sentiments," &c. May not blacks do so? Sec. 14 secures the writ of *habeas corpus*, to which Mr. Christian ascribes the liberty of colored people in England. Secs. 16 and 17 secure to *citizens* the right of assembling for the common good, in a peaceable manner, and bearing arms in self-defence. Are colored people not citizens, and therefore excluded?

[*Chancellor Kent's opinions.*]

Resort has been had to the opinions of distinguished men, politicians and jurists, and especially to that most distinguished jurist, Chancellor Kent. His opinions, though quoted against us, sustain the claim which *we* make. In vol. ii. of his *Com.* p. 71, "The article in the constitution of the United States, declaring that citizens of each State were entitled to all the privileges and immunities of citizens in the several States, applies only to natural born or duly naturalized citizens, and if they remove from one State to another, they are entitled to the privileges that persons of the same description are entitled to in the State to which removal is made, and to none other. If, therefore, for instance, free persons of color are not entitled to vote in Carolina, free persons of color emigrating there from a Northern State, would not be entitled to vote." It is said that, in p. 258 of the same volume, the learned author has advanced a different opinion, expressed as follows: "In most of the United States there is a distinction in respect to political privileges between free white persons, and free colored persons of African blood, and in no part of the country do the latter, in point of fact, participate equally with the whites in the exercise of civil and political rights. The African race are essentially a degraded caste, of inferior rank and condition in society." Has he so soon contradicted what he before advanced? Not so; he is now speaking of what the African race is *in point of fact*—how they have been treated in most of the United States.

But does it follow that because by your laws they have been degraded and deprived of *some* rights, that you have a right to deprive them of all? deprive them of citizenship? That the learned author of the Commentaries did not consider it so, is evident from taking the whole together. It is also confirmed by his speech made in the convention which formed the constitution of New York, as well as by the authority of Rufus King and De Witt Clinton.

The revolution produced a change in all the free inhabitants of the United States—all the citizens of the several States became citizens of the United States. They were *subjects* of Great Britain—they became *citizens* of the United States from the very nature of our government. In the case of Mellvaine *v.* Cox's lessees, 2 *Cranch*, 293, it is asserted without contradiction, "It was therefore a political revolution, involving in the change *all the inhabitants* of America—rendering them all members of the new society—*citizens* of the new States."

[*Citizens according to acts of Congress under the Confederation.*]

We are referred to the opinions entertained by our fathers, and those who achieved our independence. Let us look to the proceedings of Congress under the old confederation. Were any such exceptions then made as are now claimed? No; they claimed the principles of liberty as we claim them, and did not hesitate to appeal to Heaven for their sincerity.

A direct recurrence to the Journals of Congress will show that this important subject was not left to conjecture, or to inferences; who citizens were, and how the term was used by that body, was repeatedly settled. In the 3d vol. of these *Journals*, p. 366, on the debate respecting the articles of confederation, how and by whom they should be adopted, after the words, "unless nine States shall assent to the same,"—it was moved to insert these words for the very purpose of excluding this class of population: "*provided that the nine States, so assenting, shall comprehend a majority of the people of the United States, excluding negroes and Indians, for which a true account shall be triennially taken*," &c. This passed in the *negative*, no State voting in favor of it except Virginia. This was on the 30th of October, 1777. On the 13th day of November following, the subject was resumed, and an article adopted without a division, in the following words: "The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the *free inhabitants* of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free *citizens* in the respective States. And the people of each State shall have free *ingress* and regress to and from any State, and shall enjoy," &c. Let it not be forgotten that only thirteen days before, the same Congress had refused to exclude persons of color. The articles of confederation were then referred to a committee to be revised and arranged, and on the 15th of the same month adopted by Congress, containing in the 4th article the provision before recited. They were afterwards adopted by the States, and it is well known that many of the provisions of the present constitution were taken from that instrument.

The subject was not left here. Some of the provisions in the articles of confederation were objected to by some of the States, and on this subject I will take the liberty to read an extract from a letter which is put into my hand, and I do it with more pleasure, because it is in the hand-writing of a son of one of the most distinguished citizens of the United States, and one of the purest patriots of which this or any other country can boast—John Jay. His son says:

"It cannot with any decency be questioned, that up to the moment when the federal constitution went into operation, a free negro of one State, was entitled by the national compact to all the rights and immunities of a free citizen in every State of the Union."

"Little, certainly, did Sherman, Huntington, Wolcott, and Hosmer,* anticipate the feelings on this subject which now prevail in their native State, and still less the extraordinary means by which the gratification of those feelings is attempted."

The delegates from Virginia who had voted to amend the article by the exclusion referred to, on the 30th of October, informed Congress that they were instructed to vote for the articles as they stood.

Thus deliberately was the question now at issue settled according to the views *then* entertained.

But, that no doubts may exist on this subject, I refer to the 8th vol. of the *Journals of Congress*, p. 71. On the 1st day of April, 1783, a motion was made by Mr. Hamilton to amend the 8th article of the confederation, which respected the mode of apportioning the expenses incurred for the common defence, and to provide that the treasury should be supplied by the several States in proportion to the whole number of white and *other free citizens*, and inhabitants of every age, sex, and condition, including," &c.

It seems, then, that Alexander Hamilton thought there were "*free citizens*" who were not *white*, and so thought Congress; for this amendment was adopted by all the States, with the exception of Rhode Island, which voted against it, and Massachusetts, which was divided.

On the 26th day of the same April, we find the report of an address to the people of the United States, prepared by a committee, consisting of Mr. Madison, Mr. Ellsworth, and Mr. Hamilton, on providing for the expenses incurred in achieving our independence. They speak of the meritorious nature of the debts due. "Another class of creditors," says they, "is that illustrious and patriotic band of *fellow-citizens*, whose blood and whose bravery defended the liberties of *their country*."

[*Revolutionary Soldiers—Primus Babcock.*]

And who were "that illustrious and patriotic" band of our fellow citizens, whose "toils, and cares, and calamities," were to be rewarded? Were none of them colored? In looking at this subject recently in my office, I could not but recur to a list of applicants for pensions, under the act of 1818, when I was clothed with authority to examine the qualifications of applicants, and found within the little circle of my residence, nineteen colored persons whose claims, I believe, were well founded and successful. I cannot refrain from mentioning one aged black man, Primus Babcock, who proudly presented to me an honorable discharge from service during the war, dated at the close of it, wholly in the hand writing of GEORGE WASHINGTON. Nor can I forget the expression of his feelings when informed, after this discharge had been sent to the War Department, as a proof of his services, that it would not be returned. At his request it was written for, as he seemed inclined to spurn the pension, and reclaim the discharge. Was not Primus a citizen? "an illustrious citizen?"

[*Provisions of United States Constitution and Laws.*]

The term *citizen* occurs but a few times in the constitution of the United States—which was adopted in about six years after the peace. The leading

* *Note.* Delegates from Connecticut in the Congress of 1778.

men of the old Congress made that constitution—the events to which reference has been made had not faded from their memories.

In the first and second article of the constitution, the word *citizen* is employed in defining the qualifications of representatives and president of the United States. In article third—

The *judicial power* is made to extend to cases arising between citizens of a State and citizens of another State—between citizens of different States—between citizens of the State claiming lands under grants of different States—and between a State and the citizens thereof, and foreign States, citizens, or subjects.

Who will say that a colored man may not go into the courts of the United States to seek justice in any of the cases there provided for? If, however, he go there, unless it be alleged on the face of his writ that he is A CITIZEN of some State, according to the established doctrine, first promulged in the case of Bingham *v.* Cabot, 3 *Dal.* 382, often repeated since, his case will be dismissed. He *is* then *a citizen of the United States.*

Article 13 excludes *any citizen* from accepting any title of nobility or honor, from any king, prince, or foreign power, on forfeiture of his citizenship.

Is there any thing in the laws which have been passed under this constitution which militates against our claim?

That regarding naturalization, is pressed into the service. It provides that "any alien, being a *free white person*, may be admitted," &c. The answer to this is obvious. The constitution of the United States authorized Congress to establish a uniform rule of naturalization; they may very properly exclude alien blacks from becoming citizens, but surely this decides nothing as to those born here—*free born.*

I would also refer to an early law, securing the copyright to authors, being citizens of the United States, and ask, could not a free black, born here, obtain security under law?

The *Laws of Congress*, vol. iii. p. 529, which forbid importing or bringing any negro, mulatto, or other person of *color, not being a native, or citizen*, or registered seaman, into any port, &c., expressly recognise the existence of persons of color who are natives—who are citizens.

We are not considering *what* rights are secured by this clause in the constitution, but whether people of color are citizens, and entitled to *any.*

Whatever rights they have, those rights are secured to them by the constitution. They enjoy them at the will of no man or men; they hold by a higher tenure—*by the constitution.*

In a work written by one of the first jurists of this or of any country, one who has devoted great attention to the constitution of our country, in the 3d volume of *Judge Story's Constitutional Law*, p. 675, he says, "The intention of this clause [2d section of the 4th article] was to confer on the citizens of each State, if one may so say, a general citizenship, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to *under the like circumstances.*"

In the case of ——— ———, 9 *Johns.* 507, the court say, "The right of ingress to a State is unquestionable."

We are told that these persons may come and be instructed, provided the consent in writing of the civil authority and selectmen is first obtained. A right held by such a tenure is unworthy of the name.

But this is all pretence. It *was* the intention of those who framed the law to put down the school, and if their intention had been directly expressed, in few words, it would have been entitled, "An act to

prohibit Miss Crandall from setting up at Canterbury a school for colored citizens coming from other States."

That colored persons are not citizens, is a doctrine of modern origin, as is the doctrine that they may not vote. If not citizens, they could never vote in any State. If citizens, voting is a privilege of which they may be deprived. It is a valuable privilege, but not essential to individual happiness.

WILLIAM W. ELLSWORTH, Esq.

HIS ARGUMENT IN THE CASE OF PRUDENCE CRANDALL.

(Extracts.)

[*Statement of the case.*]

The statute on which this prosecution is founded, prohibits the *setting* up a school for persons of *color not* inhabitants of *this* State—teaching them in *any* school, or boarding and harboring them to attend a school, without first obtaining the consent, in writing, of the civil authorities and selectmen of the town where said school is situated.

The record finds that the pupils in this case were born in the States of Pennsylvania, New York, and Rhode Island, respectively, of free parents, and have recently come into Connecticut to attend Miss Crandall's school, where they are taught the common and essential branches of knowledge.

The principle asserted in this law, and indeed such is its very language, is, that it is a crime for any individual to entertain a person of color not having a legal settlement in any town in this State, (though he was born and has ever lived in these States,) having come here to pursue the acquisition of learning, in a *manner*, *open*, *common*, and *lawful* to *all our* population, *white* or *colored*.

[*Injustice of it.*]

If color, in a citizen of New York, is made the ground in Connecticut of political inequality, degradation, and deprivation, the principle, run out, will justify, at the *pleasure* of our assembly, a like deprivation among our blacks. If not citizens, and protected as such, they are *aliens*—their property can be confiscated, and they be driven out from our borders as Turks or Chinese.

Such were not the ideas of our fathers, when the colored soldier stood in the ranks of that army which achieved for us our liberty; nor when their names were enrolled on the pension list, as many of them were—the testimonial that *they* had a country and had bled for it.

The distinction of color would be found as *inconvenient* as it is novel. Who can tell the proportions and mixtures of blood? We shall want a scale for the ascertainment of citizenship. In Virginia, in the year 1785, they defined, by law, a mulatto to be a person having at least *one quarter* negro blood in him. The least taint of it here will exclude from the rank of citizens.

[*Views of writers on public law.*]

There is in all the writers of public or municipal law, one ancient and universal classification of the people of a country; Blackstone, Kent, Swift,

Dane, Tucker, and all others, without exception, Vattel, Martin, Ward, &c., agree in this proposition, "*that all who are born within the jurisdiction of a State are natives, and all others are aliens.*" There is not to be found the least trace of any other distinction; no allusion to any as existing in fact, none in principle. It may be true that these writers had not their attention called to the distinction of color; but then, they declare the settled law on this subject, and the reasons of the law; and color no more than stature or age bears a relation to it. The distinction is not alluded to because it did not exist, nor can it exist, in the nature of things.

[*Distinctions of color not recognised by constitution of United States.*]

There is nothing in the *constitution of the United States*, nor in the legislation of Congress, to countenance the distinction of color.

The 4th Art. 2d Sec. of the constitution, is in these words: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

The colored population, who are free to pursue their interests, come within the salutary effect of this clause in the constitution. It was early discovered that so intimate and intermingled were the people and their interests in these States, separated only by an imaginary law, not unfrequently dividing the same farm and the same neighborhood, that alienage among them could not be endured; hence it was the design of the constitution to make one nation, to the extent of the general powers of the government; to declare a citizen of one State to be a citizen of every State; and as such, to clothe him with the same fundamental rights, be he where he might, which he acquired by birth in a particular State; hence, too, we find that judgments of the States are placed upon the ground of domestic proceedings. Do not our colored population need to be rescued from alienage in the prosecution and protection of their rights and interests as much as others? They are in number, by the last census, 319,599. Some of them are possessed of property, and all of them of the same general rights with other citizens.

By the *constitution* of the United States, *color* is no disqualification or impediment to naturalization. *Congress can* as well naturalize Asiatics, South Americans, Africans, as Europeans. There is no *constitutional* distinction—all aliens can be adopted; but if our own colored population are *not already* citizens, they cannot be made so by Congress, and are worse than foreigners.

All free persons alike constitute the *representative* mass of the people. The language of the constitution is, "Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers, which shall be determined by adding to the whole number of *free persons*," &c., Art. 1, Sec. 2. The represented mass is the true source of sovereignty; to them is due the allegiance and service of the citizens.

The judicial as well as the legislative power of the constitution extends to people of color? Among others, the judicial power is declared to extend to "controversies between a State" and "citizens of another State: between citizens of different States: between citizens of the same State claiming lands under grants from different States; and between a State or the citizens thereof, and foreign States, citizens, or subjects." Now I ask, if a man of color in New York or Pennsylvania, should sue a white citizen of Connecticut in their federal court, would it be a good plea in abatement that one of the parties is a man of color? Art. 3, Sec. 2.

[*Neither by laws of Congress.*]

So the act of February 21, 1799, granting patents for useful improvements, authorizes the issuing of a patent only to a "citizen"—Cannot a man of color obtain one?—Such has been done, and he would be a bold officer who should refuse one on the ground of color. The act of 1831, on the subject of copyright, is one of the same character.

So the act of December 31, 1792, concerning the registering and recording of ships or vessels. It is enacted, that no vessel shall be considered or treated *as an American* vessel, unless she is *owned and commanded* by an "American citizen;"—men of color have owned vessels, and they have always been considered *American* vessels.

So the act of February 18, 1793, for enrolling and licensing vessels for the coasting trade and the fisheries, a like oath must be taken by the owner before she can be permitted to engage in the same—a "citizen" only can do it; but cannot and have not men of color?

So the militia law uses the words *white* male citizens; implying that there are other citizens besides white ones, for else the word citizens would not have been used. It is true colored people are exempt from military duty, but so are all persons under eighteen or over forty-five, and all females; but yet, Congress can call *all these* into the army or navy, or militia; and none will contend that exemption from military service proves political inferiority.

So the act of May 15, 1820, makes it criminal for a "*citizen*" to engage in the slave trade. Can people of color do it? And yet penal laws are construed strictly.

So the act of May 28, 1796, for the relief and protection of American seamen, declares that any "*citizen*" sailor can obtain from the custom house officer, a certificate of his citizenship; men of color have often done this, and can again.

So the act of July 20, 1790, for the regulation of seamen in the merchant's service, provides, that every ship or vessel belonging to a "*citizen or citizens*" of the United States, of a certain burthen, on a foreign voyage, shall, under a severe penalty, be provided with a medicine chest. Are not men of color bound to comply with this law?

So all the intercourse laws with the Indians, where they forbid any "*citizen*" from trading with the Indians without license, evidently reach citizens of color.

So it is worthy of remark that all our treaties with foreign nations use the words, *citizens of the United States*, as touching all our inhabitants, either in the imposition of new duties or the grant of new privileges.

These cases are enough to show that Congress, in its legislation, does *not* recognise the distinction of color; and I will venture to say that there is no case, where the word "*citizen*" is used in the laws of these States, but people of color are included, however penal and severe are its sanctions. Now, all this would be inconsistent with the idea that people of color are not citizens, but constitute a new class of human beings, neither one thing nor another.

[*Citizens under constitution of Connecticut.*]

To prove that colored people, born in Connecticut, are citizens, I urge the same considerations; and, further, I urge some provisions in our constitution, viz., Art. 1, Sec. 1, "that all men are equal in rights," which is no fiction, but a solemn declaration, clear in its meaning, and to its full extent binding on this court.

I contend for *equality* in the *political* sense of the word, *i. e.*, according to such circumstances as we have power to control. In theory, we are all equal, and we must conform to that rule of action as far as we possibly can.

So, in Sec. 5th, "Every *citizen* may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

So, in Sec. 16th, The "*citizens* have a right, in a peaceable manner, to assemble for their common good, and to apply to those invested with the power of government for redress of grievances, or other proper provisions, by petition, address, or remonstance."

So, in Sec. 17th, "Every *citizen* has a right to bear arms in defence of himself and the State."

Do not all these privileges and securities extend to the colored population? But they extend only to *citizens*, and not to any intermediate class, if there be any.

[*General citizenship.*]

These pupils are, by the 4th Art. of the constitution of the United States secured in the right for which they are now contending. The language of the provision in the constitution is as follows:—"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." 2 Art. 4 Sec.

In the consideration of this question, we may lay out of the case the matter of color; it is really a question of constitutional control, or the obligation of a State to abide by the constitution as the supreme law of the land. If we may *regulate* one citizen of another State out of our territory, we may another; making color, or any other circumstances, the rule, as it may please our legislature.

The clear intent of this section is, to do away the character and consequences of *alienage* among the citizens of these United States, to the extent of the reciprocity of the privileges and immunities secured, be they what they may. To *this* extent, a citizen of any State, is a citizen of *every* State. In the language of Judge Story, (3 *Story's Com.* 674,) "the intention of this clause is to confer on them, if one may so say, a *general citizenship*, and communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances." If citizenship, in a particular State secures immunities and privileges, so, by the constitution, a citizen of another State may hold up the broad shield of this instrument to repel every attack founded upon *alienage*. All are, as it were, members of one government, one State.

In the 4 *Wash. Ci. Ct. R.* 380, Canfield *v.* Cargell, we have the following remarks of the court, delivered by Washington, the presiding judge, upon the clause of the constitution now in question. "The next question is, whether this act (a law of New Jersey) infringes that section of the constitution which declares, 'that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.' The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental, which belong of right to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would, perhaps, be more tedious than difficult to enumerate. The right of a citizen of one State to pass through

or *reside* in any other State, for purposes of *trade, agriculture, professional pursuits*, or *otherwise*, are among the rights secured. These, and many others which might be mentioned, are, strictly speaking, privileges and immunities; and the enjoyment of them by the citizens of each State, in every other State, was manifestly calculated, (to use the expressions of the preamble of the corresponding provision in the articles of confederation,) 'the better to secure and perpetuate mutual friendship and intercourse among the people of the different States of the Union.'"

Again, in 3 *Story's Com.* 674, we read, "The provision in the constitution is plain and simple in its language, and its object is not easily to be misunderstood. Connected with the exclusive power of naturalization in the general government, it puts at rest many of the difficulties which affected the construction of the articles of confederation. It is obvious, if the citizens of each State were to be deemed aliens to each other, they could not take or hold real estate, or other privileges, except as other aliens. The intention of this clause was, to communicate all the privileges and immunities which the citizens of the same State, would be entitled to under the like circumstances."

[*The law onerous.*]

The restrictions of this law are exceedingly onerous and distressing to the parents of these pupils; shut out, as these children virtually are, from the schools of white persons, they have *retired* to a place by themselves, in deference to the prevailing prejudice against them—here they have sought out a virtuous and competent teacher to instruct them in the common branches of education, spelling, reading, arithmetic, geography, and the like;—their parents are able to do this, many of them are wealthy, and they feel that, by education, their children will be happier, and better fitted for usefulness among their depressed fellows. And who, *who!* will rise up to oppose this effort!

The moral sentiments of this community will not sanction the idea, that a man of color shall not have, like others, the *right* to direct, according to his ability, the education of his children. Mr. Wilberforce, aided by several benevolent individuals, established a seminary for colored people at Clapham, a short distance from London. Miss Crandall need not be ashamed to imitate his example.

The people of this country forced the ancestors of our colored population from Africa; they have since kept their descendants in bonds and darkness, and now talk of *right*, founded in the color and degradation of the negro, as a justification for continued wrong, and the deprivation, this day attempted, on principle and morality.

Need I tell this honorable court, that we owe a debt to the colored population of this country, which we can never pay,—no, *never, never*, unless we can call back oceans of tears, and all the groans and agonies of the middle passage, and the thousand and millions of human beings, whom we have sent, and are sending, ignorant, debased, and undone, to eternity?

The law under consideration forbids a citizen of another State from coming here, to pursue education, as all others may do, *because* he has not a *legal settlement in the State*. It is a crime to feed him, to teach him, or entertain him, and it might be made equally so to sell a farm, or rent a house to him, or in any way to aid a citizen of another State, who wished to establish himself in Connecticut. This power of regulating because of *alienage*, is virtually a power of *exclusion*, and in this case is, in effect, and was designed so to be. As well might the legislature, in order to raise up a more beautiful or vigorous generation of citizens, prohibit the harboring or enter-

taining of any citizen from the other States, who was not six feet high, or had not a well proportioned body, or black eyes, or a clear skin.

If the power claimed does exist, then I say, the legislature has power to *regulate* every white youth at Yale College, being citizens of other States, out of our borders, as *aliens*. The question is not one of color, but of power, to be exercised according to the *pleasure* of the legislature. If indeed this power exists, such persons can just as well be prohibited all *entrance* into the State, as be removed or regulated away after they have come here.

There is nothing in the settled law of any free State in the Union to countenance the provisions of this obnoxious law. Enough, however, may be found in the statutes of the slave States. For instance, the legislature of Louisiana have enacted, "that whosoever shall make use of language, in any public place, from the bar, the bench, the pulpit, the stage; or in any *other place whatsoever* shall make use of language in any private discourses, or shall make use of *signs* or actions, having *a tendency* to produce *discontent* among the colored population, shall suffer imprisonment at hard labor not less than *three years*, nor more than *twenty-one years*, or *death*, at the *discretion* of the court." It has also prohibited the instruction of blacks in *Sabbath schools*—$500 for the first offence, *death* for the second. Our law imposes a penalty of $100 for teaching a colored person in a *Sabbath school*, (having no legal settlement in this State,) and $200 for the second offence. In Virginia, "all meetings of free negroes, at any school-house or *meeting-house* for teaching them writing or *reading*," are declared an unlawful assembly. These laws are all of a kindred character; they call for universal denunciation, and well may we fear that a righteous God will not let them pass unheeded or unrevenged. And how, let me ask, can excitement be kept down in the North, while such *bloody* and cruel laws are enforced against human beings like ourselves, of the same feelings, destiny, and hopes?

TRIAL BY JURY,

AT COMMON LAW.

"The trial by jury," says Sir William Blackstone, "hath been used time out of mind in this nation, and seems to have been coeval with the first civil government thereof. Some have endeavored to trace the origine of juries up as high as the Britons themselves, the first inhabitants of our island—certain it is, they were in use among the earliest Saxon colonies. We may find traces of juries in the laws of all those nations which adopted the feudal system; as in Germany, France, and Italy, who had all of them a tribunal composed of *twelve good men and true*. The truth seems to be, that this tribunal was universally established among all northern nations, and so interwoven in their very constitutions, that the earliest accounts of the one, give us also some traces of the other. In *Magna Carta* it is more than once insisted on as the principal bulwark of liberty. No freeman (says that ancient charter) shall be hurt in either his person or property, except by the lawful judgment of his peers, or the law of the land—a privilege which is couched in almost the same words with that of the Emperor Conrad, two hundred years before, "No one shall be deprived of any right or privilege, (*tuum beneficium*,) unless according to the ancient customs of our ancestors, and by the judgment of his peers."

"The more it, [*i. e.*, trial by jury,] is searched into (3 *Black. Com.* 349, 350,) the more it is sure to be valued; and this is a species of knowledge most absolutely necessary for every gentleman in the kingdom, as well because he may be frequently called upon to determine, in this capacity, the rights of others, his fellow subjects, as because his own property, his liberty, and life, depend upon maintaining in its legal force the constitutional trial by jury."

"A common jury is one returned by the sheriff, [containing the required panel,] and their names being written on tickets, shall be put into a box or glass; and when each cause is called, twelve of the persons, whose names shall be first drawn out of the box, shall be sworn upon the jury, unless absent, challenged, or excused." * * * * * * 3 *Ib.* 358.

[Further on in his description, after enumerating the checks which this mode of trial affords against the influence of fraud, partiality, or unfairness, he adds:]

"We may here again observe, and observing we cannot but admire, how scrupulously delicate, and how impartially just, the law of England approves itself, in the constitution and frame of a tribunal, thus excellently contrived for the test and investigation of truth; which appears most remarkable, 1. In the avoiding of frauds and secret management, by electing the twelve jurors by *lot* out of the whole panel. 2. In its caution against all partiality and bias, by quashing the whole panel, if the officer returning it is sus-

pected of unfairness, and repelling particular jurors, if probable cause be shown of malice or favor. 3 *Ib.* 365.

[*The open examination of witnesses.*]

"The open examination of witnesses *viva voce*, [before a jury,] and in the presence of all mankind, is much more conducive to the clearing up of truth, than a private and secret examination, taken down in writing before an officer, or his clerk. * * * * * A witness may frequently depose that in private, which he will be ashamed to testify in a public solemn tribunal. An artful or careless scribe may make a witness speak what he never meant, by dressing up his deposition in his own forms and language; but [before a jury] he is at liberty to correct and explain his meaning. And the occasional questions of the judge, the jury, and the counsel, propounded to the witness on a sudden, will sift out the truth. Confronting of adverse witnesses is also another opportunity of obtaining a clear discovery. 3 *Ib.* 373.

Upon these accounts the trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. It is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected, either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbors and equals. A constitution that, I may venture to affirm, has, under Providence, secured the just liberties of this nation for a long succession of ages, and, therefore, a celebrated French writer* who concludes that because Rome, Sparta, and Carthage have lost their liberties, therefore, those of England, in time, must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the *trial by jury*. 3 *Ib.* 375.

[*A single magistracy not safest for the trial of facts.*]

"Great as this eulogium may seem, [Mr. B. continues,] it is no more than this admirable constitution, when traced to its principles, will be found in sober reason to deserve. The impartial administration of justice, which secures both our persons and our properties, is the great end of civil society. But if that be entirely intrusted to the magistracy, a select body of men, * * * * * their decisions, in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity. It is not to be expected from human nature, that *the few* should be always attentive to the interests and good of *the many*.

In settling and adjusting a question *of fact*, when intrusted to any single magistrate, partiality and injustice have an ample field to range in; either by boldly asserting that to be proved which is not so, or by more artfully suppressing some circumstances, stretching and warping others, and distinguishing away the remainder. Here, therefore, a competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice.

The most powerful individual in the State will be cautious of committing a flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent men, not appointed till the hour of trial; and that, when once the fact is ascertained, the law must of course redress it. This, therefore, preserves in the hands of the people that share which they ought to have in the administration of justice, and prevents the encroachments of the more powerful and wealthy.

"Every new tribunal, erected for the decision of acts, without the inter-

* *Note.*—Montesque.

vention of a jury, (whether composed of justices of the peace, commissioners of the revenue, judges of a court of conscience, or any other standing magistrates,) is a step towards establishing an aristocracy the most oppressive of absolute governments." 3 *Black. Com.* 379, 380.

[In regard to criminal matters, Mr. Blackstone has this remark:]—"The founders of the English law, have with excellent forecast contrived, that no man shall be called to answer to the king for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow subjects, the grand jury, and that the truth of every accusation should afterwards be confirmed by the unanimous suffrage of twelve of his equals, and neighbors, indifferently chosen, and superior to all suspicion. So that the liberties of England cannot but subsist, so long as this *palladium* remains sacred and inviolate, not only from all open attacks, but also from all secret machinations which may sap and undermine it, by introducing new and arbitrary methods of trial by justices of the peace, commissioners of the revenue, and courts of conscience. And however *convenient* these may appear at first, yet let it be remembered, that delays, and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters. That these inroads upon the sacred bulwarks of the nation, are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread to the utter disuse of juries in questions of the most momentous concern."

[So much for the trial by jury at common law. It need hardly be mentioned here, that the common law is the common inheritance of the people of these States—the richest legacy derived from the mother country. And that with all its blessings—with the invaluable securities it affords to life, liberty, and property—it is ours as a birthright, except so far as its application may have been restrained by positive law. It is in reference to the well known common law right of trial by jury, that the expression so often found in State constitutions—"trial by jury shall be *as heretofore*," is used.]

TRIAL BY JURY—BY CONSTITUTIONAL LAW.

"Trial by jury is as valuable to us as to our English ancestors. It is justly dear to the whole American people. Our fathers brought it with them from England, as one of the free elements of her institutions—one which has been the safeguard of all the rest, and the full security of which the people ever first demanded in those concessions to their rights, which, in times of violence and danger, were wrung from reluctant authority."

"The very first law for the general good of New Plymouth, (1623) was "that all criminall acts, and also all matters of trespasses and debts betweene man and man, should be tried by the verdict of twelve honest men, to be impannelled by authority, in forme of a jury upon their oath;" and the same principle is to be found in the fundamental laws of all the colonies. Our fathers never lost sight of, or yielded this principle for a moment. In the declaration of national rights, in 1774, they claimed the trial by jury as "their birthright and inheritance," and when our independence was secured, it was guarded by constitutional provisions in every State in the country. When the constitution of the United States was proposed for adoption, it was found that it recognised and established the right only in the trial of crimes. This produced great dissatisfaction among the people. They were unwilling that this "sacred" privilege, even in civil cases, should rest upon the vacillating

policy of legislation, and demanded that it should be placed on "the high ground of constitutional right." Accordingly, the first Congress proposed amendments, which were ratified by the States, securing the right."

CONSTITUTIONAL GUARANTEES.

United States.—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and *the persons* or things to be seized.—*Constitution, U. S., Art. 4 of the Amendments.*

No person shall be deprived of life, liberty, or property, without due process of law.—*Art. 5 of the Amendments.*

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.—*Art. 7 of the Amendments.*

The trial of issues of fact in the District, and Circuit Courts of the United States, in all causes, except civil causes of admiralty and maritime jurisdiction, and suits in equity, shall be by jury.—*L. U. S.*, 1 *Cong.* 1 *Ses. c.* 20, § 9 *and* 12.

Virginia.—That in all capital or criminal prosecutions, a man hath a right to speedy trial, by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty.

That in controversies respecting property, and suits between man and man, the ancient trial by jury is preferable any other, and ought to be held sacred.—*Bill of Rights,* § 8 *and* 11.

No freeman shall be taken, or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed, nor shall the commonwealth pass upon him, or condemn him, but by the *lawful judgment of his peers,* or by the law of the land.—*Vir. Laws, Edi.* 1794, *c.* 15.

Pennsylvania.—The trial by jury shall be as heretofore, and the right thereof remain inviolate—*Constitution, Art.* 9, § 6.

Delaware.—Trial by jury shall be as heretofore.—*Constitution, Art.* 1, § 4.

New York.—No member of this State shall be disfranchised, or deprived of any rights secured to any citizen thereof, unless by the law of the land, and the judgment of his peers.

The trial by jury in all cases as it has been heretofore used, shall remain inviolate for ever.—*Constitution, Art.* 7, § 2.

Massachusetts.—No person shall be arrested, imprisoned or despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.—*Constitution, Part* 1, *Art.* 12.

New Hampshire.—Constitution of New Hampshire is in the same words as that of Massachusetts.—See *Part* 1, *Art.* 15.

Vermont.—In all prosecutions for criminal offences, a person hath a right to a speedy public trial, by an impartial jury of his country; without the unanimous consent of which jury he cannot be found guilty.

That when an issue in fact, proper for the cognizance of a jury, is joined in a court of law, the parties have a right to a trial by jury, which ought to be held sacred.—*Constitution, Art.* 12.

Connecticut.—In all prosecutions by indictment or information, the accused shall have a speedy public trial by an impartial jury. The right of trial by jury shall remain inviolate.—*Bill of Rights,* § 9 *and* 21.

Maryland.—No freeman ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land.—*Declaration of Rights,* § 21.

North Carolina.—That in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.—*Declaration of Rights,* § 14.

South Carolina.—The trial by jury, as heretofore used in this State, and the liberty of the press, shall be for ever inviolably preserved.—*Constitution, Art.* 9, § 6.

Georgia.—Freedom of the press, and trial by jury, as heretofore used in this State, shall remain inviolate, and no expost facto law shall be passed.—*Constitution, Art.* 4, § 5.

Kentucky.—The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate.—*Constitution, Art.* 10, § 6.

Tennessee.—The right of trial by jury shall remain inviolate.—*Bill of Rights, Art.* 1, § 6.

Ohio.—The right of trial by jury shall be inviolate.—*Constitution, Art.* 8, § 8.

Indiana.—In all civil cases, when the value in controversy shall exceed the sum of twenty dollars, and in all criminal cases, except in petit misdemeanors, which shall be punishable by fine only, not exceeding three dollars, in such manner as the legislature shall prescribe by law, the right of trial by jury shall remain inviolate.—*Constitution, Art.* 1, § 5.

Mississippi.—The right of trial by jury shall remain inviolate.—*Constitution, Art.* 1, § 28.
Illinois.—The right of the trial by jury shall remain inviolate.—*Constitution, Art.* 8, § 6.
Alabama.—The right of trial by jury shall remain inviolate.—*Constitution, Art.* 1, § 28.
Missouri.—The right of trial by jury shall remain inviolate.—*Constitution, Art.* 13, § 8.

Now, who can call to mind this steady adherence to the trial by jury, during a period of so many hundred years in the mother country, and since its first settlement, in this,—who can observe with what extreme care express guarantees of this right have been inserted in the National and State constitutions,—"and who that knows the extreme jealousy of freedom, which was the characteristic of the times when these constitutions were formed, can believe that the founders of our constitution intended to hold the trial by jury "*sacred*" on every question of dollars and cents, however insignificant, and in relation to the slightest misdemeanors, and to deny it on the great question of personal liberty ? that they would yield it as a *right* to every man, for the investigation of his title to an ox or a horse, and withhold it on a trial which involved the ownership of his own limbs and faculties—in one word, the ownership of himself!" And yet to this complexion it has come at last.

It *is a fact*, notwithstanding the birthright tenure by which we and our ancestors have held the right of trial by jury—notwithstanding the guarantees by which it is fortified at common law, and the care taken to engraft it in the fundamental laws of the States and the nation, *that some maintain* that this great and glorious safeguard is *not* available, even where personal liberty is concerned, in a certain class of cases, and that it is not in the power of *State* legislation to make it so.

And what aggravates the odiousness of such a pretension is, that if such a feature there be in our laws, and it be in accordance with the constitution (which is denied) it occurs in circumstances under which *any free citizen* of a State *may be seized as a slave*, or apprentice, who has escaped from servitude, *and transported to a distant part of the Union, without any trial*, except a summary examination before a magistrate, who is not even clothed with power to compel the attendance of witnesses.

This is a fearful and terrific power, if lodged in the hands of any magistrate—and especially in the hands of one of inferior jurisdiction. It may well excite alarm, and it becomes us, with whatever skill we may be able, to examine all the bearings and relations of such a law ; and whether, if such a law there be, it be not a palpaple violation of constitutional and fundamental rights,—and hence void. To do this is our purpose.

LAW OF CONGRESS OF 1793,

RELATING TO FUGITIVES FROM LABOR.

The law alluded to at the close of the last section as conferring such terrific powers upon single magistrates, is the law of Congress of 12th Feb. 1793, relating to fugitives from labor, "Under which" (and for greater accuracy we use the words of Chancellor Walworth in describing it) "*any free citizen* of this State," (*i. e.*, of New York, and if New York, of course of any other State,) "*may be seized as a slave*, or apprentice, who has escaped from servitude, *and transported* to a distant part of the Union *without any trial*, except a summary examination before a *magistrate*, who

is *not* even clothed *with power to compel the attendance of witnesses* upon such investigation; and upon the certificate of such magistrate that *he* is satisfied that such citizen owes service to the person claiming him under the laws of the State to which he is to be transported."

The section of the law, here referred to, is as follows: that "*when a person held to labor* in any of the United States, or in either of the territories northwest or south of the river Ohio, under the laws thereof, *shall escape* into any other of the said States or territories, *the person to whom* such labor or service may be due, *his agent or attorney is* hereby empowered to *seize or arrest* such fugitive from labor, and to *take him* or her before any judge of the circuit or district courts of the United States, residing or being within the State, *or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made*, and upon proof, to the satisfaction of such judge, or magistrate, either by oral testimony *or affidavit*, taken before and certified by a magistrate of any such State or territory, that the person so seized or arrested, doth, under the laws of the State or territory from which he or she hath fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or *magistrate* to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient *warrant for removing* such fugitive from labor *to the State* and territory *from* which he or she fled." The next section imposes a penalty of $500 upon any person who shall hinder such arrest, or rescue the fugitive.

See *Law Congress*, Feb. 12, 1793, *Sec.* 3.—*Laws U. S.*, Vol. ii., p. 165.

On analysing this section, four points of consideration are presented. (1.) The mode of arrest and seizure. (2.) The magistrates upon whom authority is conferred. (3.) The hearing, or trial. (4.) The certificate, or warrant for removal. Each deserves a word of remark.

1. *As to the arrest and seizure*, the law provides no checks; it may be made, it seems, without oath, without affidavit, without a description of the person, and without warrant or precept* by the claimant himself, his agent or attorney, and without the intervention of the sheriff, or of any known public officer whatever. As to the person liable to such arrest, he may be *any citizen* or inhabitant of a State, whom, under such circumstances, and with powers so liable to abuse, the claimant, or any pretended claimant, may think proper to arrest. And when the arrest is made, however wrongfully, whether of a freeman or a slave, and the person arrested has been brought before a magistrate, (and, let it be observed, it is always a magistrate of the claimant's own choosing,) then, and not till then, nor before any other tribunal, according to the course pointed out by *this* law, can the rightfulness or wrongfulness of the proceedings and claim be questioned or met. The person arrested, whoever he may be, goes bound, a victim, like an ox to the slaughter, to be put on trial for his liberty;—And before whom! Answer,

2. *The magistrates upon whom Congress has chosen to confer the authority*—and these are,

(1.) Any judge of the circuit or district courts of the United States within the State where the arrest is made; the number of these are comparatively but few, generally one or two in a State, and

(2.) *Any magistrate* of a county, city, or town corporate, wherein such

* *Note.*—"The right of the people to be secure in their *persons*, papers, and effects *against* unreasonable searches and *seizures* shall not be violated; and no *warrants* shall issue but upon probable cause *supported* by *oath or affirmation*, and *particularly describing* the place to be searched and *the persons* or things to be *seized*." (*Const. U. S.*, Art. 4 of the *Amendments*.)

arrest or seizure is made. And these embrace all State magistrates, high and low, including all justices of the peace, whatever their intelligence, ignorance, honesty, or lack of honesty may be. Any one of these, or rather the one whom the claimant has selected, is,

(3.) *To hear and try the case;* and upon such proof as *he* may deem satisfactory, which proof may, in some cases, be *by affidavit merely*, he may decide upon the liberty of any person or citizen so arrested, without trial by jury, and himself an officer of such inferior rank as not to be clothed with power to compel the attendance of witnesses; or what is tantamount to such decision, may,

(4.) *Grant his certificate* that he is satisfied that the person so arrested owes labor or service to the claimant, which certificate is declared to be warrant sufficient to authorize his removal out of the State.* Hence the following

[*Remarks on the law of* '93.]

1. It is in derogation of State sovereignty—because, if a citizen of a State may be seized by the hand of a stranger—torn from the bosom of the community where he dwells; if he may be summarily tried and condemned to slavery, and as the case may be on affidavit merely, by an inferior magistrate, and that of his oppressor's selection; and if all this may be done without the possibility of the State interfering to secure him from injustice, then surely its sovereignty is invaded; as to him it is prostrate, powerless.

2. It is in derogation of State sovereignty, because it presumes to regulate the *internal* police of a State—to impose duties upon *its* officers, to direct what they shall do, and to inflict penalties. If Congress can regulate or

*Note.—If search were made, many cases would doubtless be found where, through the incompetency or unfitness of the magistrate, persons *really free* have been delivered up to slavery. One, however, which has very recently been exposed, and which is copied from the *Cincinnati Gazette* of *Jan.* 4, 1838, will suffice.

THE BLACK MAN FRANK.

Our readers may recollect that some twelve or thirteen months ago, notice was taken in the Gazette of the abduction, under forms of law, of a black man from this city. The case was this: Frank was brought to Cincinnati and bound out by a Kentucky gentleman, who claimed to be his master. Frank was a youth, and asserted that he was free born. His mother was a slave. Her master set out to remove from Maryland, or Eastern Virginia, to Kentucky. He was weather bound in Pennsylvania, and compelled to winter in Pittsburgh, at which place Frank was born. The mother and child were brought to Kentucky, where the child's right to freedom was kept open, and discussed as a doubtful question.

Upon the death of his mother's master, he was sold to a purchaser, who was fully informed of all the facts. By this purchaser he was brought to Cincinnati and hired. Very soon afterwards he asserted his right to freedom, by withdrawing from the employ of the person to whom he had been hired. He remained about eight years in Cincinnati, acting as a freeman.

In the fall of 1836, he was claimed as a slave, by a transferree of the master who hired him in Cincinnati, the transferree being *the son*-in-law of the individual making the transfer. Upon this claim, Frank was delivered up by *one of our justices!!* and two of our lawyers, in solemn written opinions, sustained the legality of such delivery. Frank was hurried by short cuts to Louisville, and sold to a Mississippi slave dealer. When this slaver attempted to sell him at St. Francisville in Louisiana, Frank so boldly and intelligibly stated his case, that protection was afforded him. He was committed to prison for safe keeping, and legal proceedings instituted to determine his case. Information is received that, after an elaborate trial, the court have declared him a freeman, both on the fact of his birth in Pennsylvania, and his hire in Ohio. An appeal is taken to the supreme court, but no doubt is entertained of the affirmance of the judgment.

When we last noticed this case in the Gazette, a strong confidence was expressed, that right and justice would be done in the Louisiana courts. The judicial tribunals of the slave States have always maintained an elevated regard for justice, in adjudicating slave cases, and I am greatly rejoiced that this high feeling is still prevalent.

At the time of Frank's abduction, an offer was made, through the Gazette, to the party on whose claim he was taken, of full indemnity, upon condition that Frank was brought back here, and a full investigation of the case permitted. No attention was paid to this proposition.

control one State officer it may another; if a judge or a justice, then a governor or senator; and thus a State be superseded in the use and services of its own officers.

3. The law is in derogation of the right of trial by jury—it does not itself provide such trial, and if it be, as is claimed by some, a paramount law, it does not allow of any; and all the sanctions of the common law, and of the national and state constitutions to secure a jury trial, are of no avail. They are subverted.

For these reasons—the inquiry is important and pertinent. Is the law of '93 constitutional? Answer—(1.) It has been decided that it is *not* constitutional *so far* as it purports to confer power on *State* magistrates. And (2.) The opinion has been advanced by judges of courts, and jurists of eminence, (but the point is not yet settled) that the law is void: Congress not having power to pass it, nor power to deprive a citizen of trial by jury.

LAW OF '93 VOID AS TO STATE MAGISTRATES.

By the act of 1793, relating to fugitives from labor, the trial of the right of the master, (so far as any trial is provided for,) may as well be before a *State magistrate* as the judges of the circuit and district courts. But your committee, after a full investigation of the question, believe that *this part of the law is unauthorized and void.*

It is a well settled principle, that *Congress cannot confer any part of the judicial power of the United States on State magistrates or officers.* In the language of the Supreme Court of the United States, (1 *Wheaton*, 304,) "Congress cannot vest any portion of the judicial power of the United States, except in courts ordained and established by itself," and the *persons* filling the stations respectively, must be appointed and commissioned by the government of the United States, under a previous law of Congress.

This doctrine was maintained in the celebrated case of Martin *v.* Hunter's Lessees, (1 *Wheaton*, 304,) and has not only been since recognised in the Supreme Court of the United States, but by repeated decisions of the highest tribunals of various States. It grows out of the express provisions of the constitution. Art. 3, Sec. 1, provides, that "the judicial power of the United States shall be vested *in one supreme court, and in such inferior courts as Congress may from time to time ordain and establish*," &c. What then is the judicial power of the United States? The second section of the same article answers this question. "The judicial power shall extend to *all cases* in law and equity, arising *under this constitution, the laws of the United States*, and treaties made," &c.

We refer to a few of the cases in the State courts: and first, to Commonwealth *v.* Freely—*Virginia Cases*, 321. This was an indictment for robbing the mail, under *an act of Congress* which gave, in *express* terms, jurisdiction *to the State courts* of the offence. But the court of errors, in Virginia, decided that they could not, under the constitution, exercise it; and the whole court, (consisting of Judges White, Stewart, Brockenborough, Sample, Allen, Randolph, Dabney, and Daniel,) entered the following judgment: "The court doth unanimously decide that, as the offence described in the indictment in this case *is created by an act of Congress*, the said superior court, being *a State* court, hath not jurisdiction thereof." There is a case, similar in principle, in 6 *Hall's L. J.* 113, United States *v.* Campbell. (See also the opinion of Judge Cheves, of South Carolina, 12 *Niles' W. Reg.* 266, *in exparte* Rhodes; and the opinion of Judge Bland, of Pennsylvania, in the case of Joseph Almeida, *ibid*, 259.)

The same question came before the Supreme Court of New York, in United States *v.* Lathrop, 17 *Johns.* 4. This was an action of debt, brought

to recover a penalty of $150, under the *act of Congress*, passed August 2, 1812, for selling by retail spirituous liquors, contrary to the provisions of that act, *which*, in terms, *authorized the State courts* to take jurisdiction of offences prosecuted under it. The court decided that *Congress could not invest them with such a jurisdiction*, and they dismissed the cause.

The case of Ely *v.* Peck, 7 *Conn. R.* 239, was an action brought on a *statute law of the United States*, to recover damages, which the plaintiff, as owner of a schooner, had sustained by the desertion of the defendant. This act, also, in terms, *conferred jurisdiction* of the subject upon the *State courts*; but the Supreme Court of Connecticut declined to act under it, holding that "*Congress cannot vest any portion of the judicial power of the United States, except in a court ordained and established by itself.*" and that the "*State courts are not ordained nor established by Congress, and are not amenable to that body.*"

For a further discussion of these questions, the committee refer to Houston *v.* Moore, 5 *Wheaton*, 35; 3 *Story's Com.* 622—625; *Sargent's Const. Law, ch.* 27, 8; 1 *Kent's Com.* 395—405; United States *v.* Bailey, 9 *Peters*, 328.

There are cases where the courts of the United States and of the several States may rightfully exercise concurrent jurisdiction, but *no* power *can* be communicated *by Congress* to a tribunal established by the State, which had not jurisdiction upon the subject matter previous to the constitution, and which has not, *in itself*, an inherent power adequate to the performance of the duty enjoined upon it; and in *no instance* can it be exercised in violation of *State* obligations. (See 3 *Story's Com.* and *Kent's Com. ubi supra.*) In relation to the power attempted to be communicated to magistrates by the law of the United States, upon the subject of fugitive slaves, it wants for its exercise every one of those requisites. The exercise of such a power would be against the State obligations of magistrates in Massachusetts, for the proceedings enjoined by Congress are not only in derogation of our common law, but their form is in violation of the express provisions of our constitution.

Report Judiciary Committee, Massachusetts Legislature.

THE LAW OF '93 OPPOSED BY STATE LAWS.

Had the legislature of but one State deliberately passed a law conflicting with the law of '93, the suspicion thence arising of the unsoundness of the latter, if any, would have been slight; but when the legislatures of several respectable States, through a succession of years, have not hesitated to pass such laws, it must be confessed that the inference is much strengthened—that it amounts to something more than a suspicion.

Pennsylvania.

In 1820 (March 27) the legislature of Pennsylvania enacted,

"That *no alderman or justice of the peace* of this commonwealth *shall have* jurisdiction or take cognizance of the case of any fugitive from labor from any of the United States or Territories, under a certain act of Congress, of the 12th of Feb. 1793, respecting persons escaping from the service of their masters; nor shall any alderman or justice of the peace issue or grant a certificate or warrant of removal of any such fugitive from labor as aforesaid, under the said act of Congress, or under any other law, authority, or act of the Congress of the United States, under penalty of being declared guilty of a misdemeanor and subject to a fine of not less than $500 or more than $1000, according to the discretion of the court in case of disobedience."—*Purdon's Digest*, p. 653.

This is clearly in conflict with the law of '93. It peremptorily forbids the jurisdiction of a host of inferior magistrates who, under the law of Con-

gress, were authorized to act, and subjects them to a fine in case of disobedience. It wisely interposes for the protection of citizens against the abuse of power lodged in unsafe hands.

In 1826 there was a further law passed in Pennsylvania, on this subject. It is entitled "An act to give effect to *the provisions* of *the constitution* of the United States, relative to fugitives from labor," &c. This act authorizes any judge, justice of the peace, or alderman, on application supported by *the oath* or affirmation of the claimant, his agent, or attorney, that the fugitive hath escaped from service, and an *affidavit* of *the title* of the claimant duly taken in the State where he resides, containing the *name*, *age*, and *description* of the person of such fugitive, *to issue a warrant* to a *sheriff* or *constable* of the city or county, for the arrest of the fugitive to be *named* in the warrant, and to bring him BEFORE A JUDGE *of the proper county*, who is invested with power to hear, try, and, if satisfactory proof be given, to grant a certificate of removal.—*Purdon's Digest*, 655.

This provision shows a living watchfulness for the liberties of the citizens, by requiring a *warrant* to be issued before an arrest is made, and requiring also, as a pre-requisite of the warrant, specific proof of the escape, the ownership, and the identity of the person claimed. And here again the law of Pennsylvania conflicts with the law of Congress, which dispensed with all these salutary preliminaries; neither did it require the intervention of a known public officer; but this does. On the other hand, Pennsylvania at the same time is mindful of her constitutional obligations to the claimant; she gives him the advantage of process and the services of a public officer to recover the fugitive, provided he is able to make the requisite proof, and by causing the trial to take place before a a JUDGE of the county.

Before proceeding further, here perhaps a distinction should be taken which lies at the root of the question of constitutionality. There is no doubt as to the obligation, in law, (what it is in morals is not now the question,) to deliver up an escaping fugitive from labor on the claim of his master, whenever such claim is legally made. The constitution, (*Art.* 4, *Sec.* 2,) expressly enjoins,

"That no person held to labor or service in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor is due."

But here the question arises, to whom does it belong to do it? Is it the right of the States or of Congress to prescribe the mode of delivering up?

This point will be fully considered hereafter. It may be well, however, to observe in a word, that on the one side it is held that the obligations imposed by the clause rests upon the States, and that to them belongs the right of providing for its observance, and not to Congress—and for the reason, that the first duty imposed by the clause is, that any State, to which a person held to labor in another State may flee, shall pass no laws to discharge such person from his duty of service to his master. This clearly imposes an obligation upon the States *not* to pass such a law. Does it rest any thing on Congress? And so of the remainder of the clause as to the delivery up—*who* is to deliver up? The State, it is held, or the authorities of the State, *within* whose bounds the fugitive may be—who else so proper to do it? The opposite view is, that *Congress* has a right to legislate on the subject, and that so far as such right goes, her legislation is paramount, and the law of a State cannot alter or impair it.

These remarks, in connexion with the *obligation* imposed by the *constitution* to deliver up fugitives from labor on claim, which is binding upon all

the States, and which, as a legal obligation, none deny, and the *doubts*, to say the least, entertained of the constitutionality of the law of Congress of '93, will help explain why State legislatures, where it has been deemed necessary for the protection of their citizens, have not scrupled to throw themselves athwart the provisions of that law, while at the same time they have taken great care to provide facilities for a fair and full trial of a claimant's title to his alleged fugitive. Other States have attempted to legislate upon the subject, and there is implied in any legislation upon the subject a claim of power in the States, if not a denial of that assumed by Congress.

The position taken by New York is the most prominent.

New York.

During the progress of the late revision of the statute laws of New York, the case of persons claimed as fugitives from labor came under the special review of the learned revisors. Those gentlemen were, *Benjamin F. Butler*, (now attorney general of the United States,) *John C. Spencer*, and *John Duer*, Esqs.; and if the standing of these men as jurists do not invest their recommendation with any thing like authority, it certainly entitles them to respect.

In an "*original note*" accompanying their report of legal regulations on this head, they say, "No subject has given rise to so much irritation in our neighboring States, or is so likely to occasion difficulty in our own, as the *arrest and carrying away* of fugitives from service. The act of Congress, [of 1793,] vol. ii. 331, vests the very delicate power of determining upon the right of a *human being* to personal liberty, *in any magistrate* of a county, city, or town corporate wherein a seizure shall be made!" * * * * And they say "That *Congress* have *no right* to compel the *State* courts or magistrates *to execute* the laws of *the Union*, is *sufficiently established*."

The provisions reported by them manifestly have two objects in view; one, to throw every proper safeguard around the liberties of the people, the other, to afford every reasonable facility to persons entitled to the services of fugitives from labor to assert and establish their claim.

"The case is one (say they in another 'original note') where the legal knowledge, firmness, and independence of *our highest judicial* officers seem required, as well to protect the defenceless, as to insure confidence in the decision and give effect to the claim. The provisions offered conform substantially to those of the act of Congress referred to, but *vary the details* so as to afford the utmost *opportunity to a fair investigation*, and *to check* any *abuse* of such claim."

As adopted by the legislature, the provisions are substantially as follows. See *Rev. Stat. N. Y.*, *Part* iii., *Chap.* ix., *Tit.* 1, *Art.* 1.

1. A claimant legally entitled to the services of a fugitive from labor, fleeing from another State or territory into the State of New York, may, *on due proof* of his title, have a writ of *habeas corpus* to bring the body and case up for investigation.

2. The proof to entitle to a writ of *habeas corpus*, must be by affidavit, setting forth minutely and particularly the ground of the claim to the services of such fugitive, the time of the escape, and where he then is.

3. Courts of record, the chancellor, or a justice of a supreme court of New York, or some officer, (being of the degree of counsellor at law of the same) and authorized to perform the duties of such justice, are allowed to issue writs of *habeas corpus*.—And all justices of the peace, magistrates, or other officers appointed under the authority of this State, (other than those above authorized,) are expressly forbidden to issue to such writ, or any other warrant or process to arrest any alleged fugitive, or to grant any certificate authorizing a removal, under pain of being deemed guilty of a misdemeanor, and a forfeiture of 500 dollars penalty to the party grieved, in case of disobedience.

4. The writ of *habeas corpus* is to be directed *to the sheriff* of the county, where such fugitive

may be, commanding him to take the body of the fugitive, and to have him before the court or officer issuing the writ, on a day specified to answer to the claim.*

5. On the hearing, if required, the officer or court issuing the writ, shall allow reasonable time to either party to procure further proof, and in the mean time the alleged fugitive may be committed to custody, or held to bail.

6. If, on the hearing, the court or officer decide in favor of the claim, a certificate, authorizing the removal of the fugitive, is to be granted to the claimant or his agent.

7. But if the court or officer disallow the claim, the fugitive is to be discharged, and he is entitled to 100 dollars forfeiture from the claimant, together with his costs and expenses, and also to the damages he has sustained.

Further, it is enacted that the fees and expense incurred in any proceeding shall be paid by the claimant, before any writ shall be allowed, or other service rendered, for which such fee shall be chargeable.

[*Provision for a jury trial in New York.*]

8. At any time during the pendency of a writ of *habeas corpus*, or of proceedings under it, the alleged fugitive may bring a writ of *homine replegiando* against the person claiming his services, or his agent, and this he may do whether he be in custody or not. The fugitive is not compellable to give security to prosecute the writ; but if he is in custody, he shall not be delivered from it without security.

9. On the issuing of a writ *de homine replegiando*, all proceedings under the *habeas corpus* are stayed until final judgment upon the writ *de homine replegiando*.

10. When, however, the alleged fugitive is kept in custody, there is a statute which declares the claimant shall pay two dollars a week for his support, so long as he remains in custody, and in default of such payment he shall be discharged on his own recognisance.

11. The claimant, or his agent, after a writ of *homine replegiando* has been issued, may be held to bail by an order of a judge of the court, from which the writ issues, in a discretionary sum, but not less than 250 dollars, conditioned to pay the alleged fugitive all his damages, provided the claim be not established against him.

12. Every person who shall remove, or attempt to remove, from this State, (N. Y.) any such fugitive, or any one alleged to be a fugitive from service or labor, under any pretended certificate granted by a judge, or under any other pretence after a writ of *homine replegiando* has been brought and before judgment thereon, shall forfeit 500 dollars to the aggrieved party.

13. No claimant, (of a fugitive,) or his agent, or any officer or other person, shall take or remove such fugitive from this State, or shall do any act towards such removal, unless authorized so to do, pursuant to the provisions of [the law intended here to be set forth, viz.] *Art.* 1. *Tit.* 1. *Chap.* ix. *Part* iii. of the *Revised Statutes*, under pain of a forfeiture of 500 dollars penalty to the aggrieved party, in case of disobedience.

Such are the provisions of the New York law, adopted at a time when their whole code underwent a careful revision, on the recommendation of the learned revisers, who conclude their report on the subject by saying: "The preceding sections have been drawn for the purpose of enabling any person claimed as a fugitive, to have such claim *tried by a jury* in the ordinary course of judicial proceedings. The writ of *homine replegiando*, is well adapted to the case. * * * * * The *effect* of the above provisions *will be, that no person can be removed* under the authority of a judge of the United States, or of this State, upon the *summary inquiry* and decision contemplated by the act of Congress, [of '93,] if a demand of a trial by jury shall have been made.—*Reviser's Reports and Notes*, 3 *Rev. Stat.* p. 783, 2d edi.

Here, then, we have not only the inferences to be drawn from a practical repudiation of the law of Congress, in several important particulars, by a respectable State and legislature, against that law; but we have the express and official opinion of B. F. Butler, John C. Spencer, and John Duer, Esqs., as to the effect of the provisions they had introduced, viz.: That no person could be removed under the authority of a judge of this State, or even of the United States, upon the summary inquiry and decision contemplated by

* *Note.*—The policy of New York, on the recommendation of the revisors, seems to have been to allow none but officers, of the most respectable grade, ministerial as well as judicial, to participate in the discharge of the high and responsible duties imposed. Hence jurisdiction is only granted to courts of record, to the chancellor, to the justices of the supreme court, or to persons authorized to perform the duties of such justice; and hence also in regard to *ministerial* officers, who were to be employed to execute process. The statute allows a writ of *habeas corpus* to be directed only to the highest of this grade—to sheriffs. The legislature were doubtless aware of the dangers which would threaten the poor and defenceless, were they liable to be arrested and harrassed in these cases by the lowest class of police officers, who swarm in populous places, too many of whom are needy and unprincipled.

the act of Congress of 1793, if a demand of a trial by jury shall have been made. This opinion clearly implies that, in their view, there was nothing in the law of Congress, or in its binding force, to prevent a State legislature granting a jury trial in such cases.

But it may be said that, in one of the courts of New York, those provisions so circumspectly arranged by the legislature, have been held nugatory and void, because they conflict with the law of Congress. True, an opinion (but claimed to be an unsound one by many,) delivered by one of the justices of the supreme court of that State, did for a while seem to unfasten the safeguards of liberty, and to shake confidence in the powers of the legislature to protect its own citizens. In the case of Jack *v.* Martin, (12 *Wend. Rep.*, 311,) a writ of *homine replegiando* was set aside by Judge Nelson. But it is denied that the rule, there laid down, has become the settled law of the State; when that case afterwards came up for hearing before the court of errors. the position taken by the supreme court on the point now under consideration was not affirmed. The writ was held invalid, but on another ground altogether; and while this decision of the supreme court stood unaffected and unmodified by the course taken in the court of errors in regard to it, inferior officers, and particularly the recorder of the city of New York, refused to allow appeals to the writ of *homine replegiando*, in the case of persons alleged to be fugitives who were brought before him;—but now it is not so, since the discussions in the court of errors, on error from the supreme court in the case of Jack *v.* Martin, have transpired; for reasons therein contained, or from a change in his views of duty arising from the reflections of his own mind, writs of *homine replegiando* have again been allowed. The case of Wm. Dixon is one of these.

[*Writ of Homine Replegiando.*]

The writ *de homine replegiando*, law writers say, lies to replevy a man out of prison, or out of the custody of any private person, in the same manner that chattels taken in distress may be replevied to have the question of *title tried by jury:* and in the end (which, law writers further say, is the meaning and intent of *a replevin*,) to have the actual specific possession of the identical thing claimed restored to its proper owner. The writ *de homine replegiando*, therefore, is, of course, the very writ for the case in hand, to give a man the advantage of a *jury trial* to get his body, muscles, and limbs restored to their proper owner, that is to himself.

The question presented for decision in the case of Jack *v.* Martin, (12 *Wend. Rep.*, 311,) was upon the validity of a writ of *homine replegiando*, issued under the provisions of the New York law.

The question involved two points:—

First, The writ was held not to lie in that case, because *it had been admitted* by the pleadings on the part of *Jack*, the fugitive, that he *was the slave* of the claimant, and had escaped from her service. To allow the writ, therefore, would be to call a jury to try a fact already admitted and settled, which would be useless.

This ground was sufficient of itself to justify the court in setting aside the writ; and had Judge Nelson stopped here, it had been well. But, unnecessarily in the

Second place, The question of the constitutionality of the law of this State, under which the writ *de homine replegiando* had been issued, was brought in. and its unconstitutionality urged, and, indeed, placed in the foreground by Justice Nelson, in giving his opinion.

"There is," said he, "a direct conflict between the two powers,

between the mode of remedy provided by Congress on the one hand, and by our State legislature on the other; and that on the question, which shall give way? Shall the certificate of a magistrate under the law of Congress of 1793, which declares *it* shall be a sufficient warrant for removing a fugitive, be permitted to perform its office? Or shall a writ *de homine replegiando*, under the State law of 1830, prevent it. The law of 1830 must yield.

So that, were this decision settled law, not only would the writ *de homine replegiando*, in the case of Jack *v.* Martin, have been nugatory; but the foundation for such writ in all other cases demolished, by declaring the law under which it issued unconstitutional; and, as a consequence, rendering a sovereign State utterly impotent to protect the liberty of a native born citizen, to the extent of interposing a jury trial between him and any one who might arrest and claim him as a slave. If this doctrine prevails, the laws since passed by the legislatures of New Jersey, Massachusetts, and Vermont, (for this decision does not seem to have had much influence upon them,) granting a jury trial in the case of fugitives from labor, must fall to the ground also.

But, as has been already intimated, the effect of this decision of the supreme court has been materially modified, by what took place in the court of errors. When the case came into that court, the judgment given in the supreme court, so far only as it decided that the writ *de homine replegiando* was inoperative *in the case in question*, was affirmed; and it was affirmed *solely on the ground* that the plaintiff having by his pleas *admitted that he was the slave of the claimant, and had escaped* from her service; and that *therefore* the claimant was entitled to judgment. The court of errors *expressly declined to pass upon the constitutionality of the law of Congress and of the State.* That question therefore still remains to be decided, and that is the point, or at least a cardinal point to be settled, in the case of William Dixon. (See *Note of Dixon's case in "The Colored American,"* of Aug. 5th, 1837.)

In the court of errors, on the hearing of the case alluded to, two opinions were delivered, one by Chancellor Walworth, and the other by a Senator.* The latter took the ground assumed in the decision in the supreme court, that the statute of this State permitting a slave to sue out a writ *de homine replegiando* after the granting of a certificate by a proper officer and allowing him a trial by jury, is unconstitutional and void. But the Chancellor in his opinion denies the power of Congress to legislate upon the subject of the escape of slaves from one State to another, and consequently insists that the act of Congress of Feb. 1793, making the certificate of a State magistrate conclusive evidence of the right of a claimant to remove a native born citizen of one State to another State, and thus deprive him of the benefit of the writ of *habeas corpus*, and the right of trial by jury, is unauthorized by the constitution. (See 14 *Wend. Rep.* 507, 8, *Reporter's Note.*)

*Note.—Mr. Bishop, of Washington county.

New Jersey.

In this State, also, the legislature have not hesitated to take ground against the law of '93, so far as to provide, on the behalf of persons claimed as fugitives from labor, the benefit of a trial by jury.

By a law of that State it is provided,

That "when any person claimed as a fugitive slave shall be brought before any judge, &c., if either party shall demand a trial by jury, then it shall be the duty of the said judge to issue a *venire* to the sheriff to summon a jury to enquire into and determine the same."—See *Act of February 15, 1837, Supplemental to an Act of New Jersey concerning slaves.*

And this is only carrying out the opinions of the judges of the supreme court of that State, who had but the year previous intimated their opinion that the law of Congress was unconstitutional. This they did in the case of Alexander *alias* Nathan Himesley *v.* Haywood. It seems that Nathan, who was claimed as a runaway slave, was carried before one Haywood, a justice of the peace of the county of Burlington, who gave a certificate that he was a slave &c., agreeably, as well to the act of Congress, as the then statute of the State; but instead of delivering him to the claimants he committed him for the time to prison, though without a legal warrant. The case ultimately turned on this point, *i. e.*, the *authority of the magistrate* to commit. But before the supreme court, to which it had been removed by *certiorari*, the constitutional questions involved were noticed somewhat at large, and the following is an account of the result; it is extracted from a letter, the original of which is said to have been written by an eminent lawyer of that State, who was of counsel in the case.

"I hasten to communicate to you the pleasing intelligence that *Nathan* has not only been discharged, and the principles upon which I supported the application for his discharge sustained; but the court (at least a majority of them) have gone further, and settled some questions which will give delight to the heart of every friend of the unfortunate African race.

First, The Chief Justice (Hornblower) and Justice Ryerson, have expressed a strong inclination, *and it is evidently their opinion* (although they said it was not necessary to decide it in this case) that the law of Congress regulating the apprehension of fugitive slavesis UNCONSTITUTIONAL, because *no power is given to Congress* by the constitution of the United States *to legislate* on this subject; and their reasoning carried conviction to every mind."

It was also decided "that the *black* color was no longer presumptive evidence of slavery in the State of New Jersey." "I consider this day (says the writer) as the brightest that has dawned upon this unfortunate race since the year 1804, and the proudest which has occurred in our judicial history since we became a State. It has blotted from our escutcheon a dark stain, upon which, as a Jerseyman and a freeman, I could not look without regret and emotion, and restored the negro to that natural equality which we have theoretically admitted, but heretofore virtually and practically denied.

See *Philadelphia Friend, July* 11, 1836, *and Liberator, July* 30, *same year.*

Massachusetts.

This is another State which, through her legislature, has felt called upon to interpose the shield of a jury trial between her citizens and the law of

Congress of '93. This she has done as a general provision, "for the benefit of any persons held in unlawful restraint," by allowing the writ of *homine replegiando*, or personal replevin. The subject was brought before the legislature on petition. It was referred to the judiciary committee. That committee made an elaborate report, and their conclusion (in pursuance of which a law was passed) was—

"That whether the law be unconstitutional on the one hand, or valid on the other, in either case, a person seized under the act of Congress (of '93) before or after certificate given, might have an independent process to try his right to the character of a freeman. They therefore reported a bill restoring the writ of personal replevin; remarking, that while they should have recommended such bill for the benefit of *any* person held in unlawful restraint, as a measure of political wisdom, and to give completeness to their system, independently of any regard to the condition of those claimed as fugitives from labor; yet they could not see any thing in the fact that the writ of personal replevin might be used by alleged fugitives, in the investigation of their claim to freedom, which should afford the slightest reason against its adoption. On the contrary, they look to this use of the writ as one of its just and legitimate offices.

"And why should not a person so seized have these means of trial? If he be a slave he is to be given up to his master; but may he not have the question, whether he be in truth a slave, tried in a manner adequate to its importance, to himself and offspring? And why should it not be tried, too, where he is, before (on the certificate of any magistrate whom the claimant may select, granted on a summary and exparte examination,) he is carried away, where, it may be, he can have no means of defence left to him?

The trial is to him of tremendous interest, involving consequences, in some respects, even greater than those which await the judgment on the most abhorred crime known in the law. For our constitution provides that this shall 'not work corruption of the blood. But a judgment against one condemning him as a fugitive slave, does work corruption of the blood and forfeiture, to himself, his children, and his children's children, to the latest generation.' The fate of the recaptured slave, is the 'lower depth within the lowest deep' of slavery. One of the objects of reclaiming fugitives is to strike terror into the slaves who have never fled, by a severe punishment. It is the innermost dungeon of the prison house, which every slave has been taught from his childhood to hang round with whips of scorpions, and to fill with the blackness of despair. The want of trial by jury brings this pit of horrors before the feet of every colored freemen as well as every fugitive slave in the land."

Vermont.

In Vermont, also, the legislature has made provisions to extend a jury trial to persons claimed as fugitives from service or labor.

OPINION OF THE CHANCELLOR OF THE STATE OF NEW YORK,*

Delivered in the Court of Errors, in the case of Jack *v.* Martin, on Error from the Supreme Court. 14 *Wend. Rep.* 524.

[*Ground of decision in the court below stated.*]

"This cause has been argued in this court upon the assumption, that the decision which is now to be made, necessarily involves the question as to the constitutional right of Congress to legislate upon the subject of fugitive slaves and apprentices—or, in the language of the constitution, persons held to service or labor in one State under the laws thereof, escaping into another; and the decision of the court below is put upon the ground, that Congress not only has the power to legislate upon the subject, but that their legislation must necessarily be exclusive in relation to this matter; that the law of Congress, of February, 1793, is valid, and binding upon the States; under which law any free citizen of this State may be seized as a slave, or apprentice, who has escaped from servitude, and transported to a distant part of the Union, without any trial, except a summary examination before a magistrate, who is not even clothed with power to compel the attendance of witnesses upon such investigation; and upon the certificate of such magistrate that he is satisfied that such citizen owes service to the person claiming him, under the laws of the State to which he is to be transported.

[*Chancellor not prepared to take that ground.*]

"If the decision of this cause turned upon these questions, I am *not* prepared to say that the Congress of the United States had the power, under the constitution, to make the certificate of the State magistrate conclusive evidence of the right of the claimant to remove a native born citizen of that State to a distant part of the Union, so as deprive him of the right of the benefit of the writ of *habeas corpus*, and the right of trial by jury in the State where he is found.

[*Removal for trial to another jurisdiction.*]

"In the case of Martin, before the Circuit Court of the United States for the Southern District of New York, to which we were referred on the argument, the facts appear to be assumed that there is no question as to the identity of the individual whose services are claimed, and that he is, in truth, a fugitive from the State under whose laws it is alleged that he owes services or labor to the claimant. If these important facts are conceded, or judicially established, with the additional fact that the fugitive was actually claimed, and held in servitude in the State from which he fled, whether rightfully or otherwise, previous to his flight, I admit there can be no reasonable objection in principle to the removal of the person whose services were thus claimed, back to the State from which he fled, as the most proper place for the trial and final decision of the question whether the claimant was legally entitled to his services, according to the laws of that State.

But suppose, as is frequently the case, that the question to be tried relates merely to the identity of the person claimed as a fugitive slave or apprentice, he insisting that he is a free native born citizen of the State where he is found residing at the time the claim is made, and that he has never been in the State under whose laws his services are claimed—can it for a moment be supposed that the framers of the constitution intended to authorize the

* *Note.*—Hon. Reuben Walworth.

transportation of a person thus claimed to a distant part of the Union, as a slave, upon a mere summary examination before an inferior magistrate, who is clothed with no power to compel the attendance of witnesses to ascertain the truth of the allegations of the respective parties! Whatever others may think upon this subject, I must still be permitted to doubt whether the patriots of the revolution, who framed the constitution of the United States, and who had incorporated into the Declaration of Independence, as one of the justifiable causes of separation from our mother country, that the inhabitants of the colonies had been transported beyond seas for trial, could ever have intended to sanction such a principle as to one who was merely *claimed* as a fugitive from servitude in another State.

[*States have the power to legislate—not Congress.*]

"I am one of those who have the habit of believing, that the State legislatures had general powers to pass laws on all subjects, except those in which they were restricted by the constitution of the United States, or their own local constitutions, and that Congress had no power to legislate on any subject, except so far as the power was delegated to it by the constitution of the United States. I have looked in vain among the powers delegated to Congress by the constitution, for any general authority to that body to legislate on this subject. It certainly is not contained in any express grant of power, and it does not appear to be embraced in the general grant of incidental powers contained in the last clause of the constitution, relative to the powers of Congress. *Const. Art.* 1, *Sec.* 8, *Sub.* 17.

The law of the United States respecting fugitives from justice and fugitive slaves, is not a law to carry into effect any of the powers expressly granted to Congress, 'or any of the powers vested by the constitution in the government of the United States, or any department or officer thereof.' It appears to be a law to exercise the rights secured to the individual States, or the inhabitants thereof, by the second section of the fourth article of the constitution; which section, like the ninth section of the first article, merely *imposes a restriction* and a duty *upon other States* and individuals in relation to such rights, but *vests no power* in the federal government, or any department, or officer thereof, except the *judicial power* of declaring and enforcing the rights secured by the constitution.

The act of February, 1793, conferring ministerial powers upon the State magistrates, and regulating the exercise of the powers of the State executive, is certainly not a law to carry into effect the judicial power of the United States; which judicial power *cannot* be vested *in State* officers. If the provision of the constitution, as to fugitive slaves and fugitives from justice, could not be carried into effect without the actual legislation of Congress on the subject, perhaps a power of federal legislation might be implied from the constitution itself; but no such power can be inferred from the mere fact that it may be more convenient that Congress should exercise the power, than that it should be exercised by the State legislatures. In these cases of fugitive slaves and fugitives from justice, it is not certain that any legislation whatever is necessary, or was contemplated by the framers of the constitution.

[*Object and effect of the constitutional provision on the subject.*]

"The provision as to persons escaping from servitude in one State into another, appears by their journal to have been adopted by a unanimous vote of the convention. At that time the existence of involuntary servitude, or the relation of master and servant, was known to and recognised by the laws of every State in the Union except Massachusetts, and the legal right of recaption by the master existed in all, as a part of the customary or com-

mon law of the whole confederacy. On the other hand, the common law writ of *homine replegiando*, for the purpose of trying the right of the master to the services of the slave, was well known to the laws of the several States, and was in constant use for that purpose, except so far as it had been superseded by the more summary proceeding by *habeas corpus*, or by local legislation. The object of the framers of the constitution, therefore, was not to provide a new mode by which the master might be enabled to recover the services of his fugitive slave, but merely to restrain the exercise of a power, which the State legislatures respectively would otherwise have possessed, to deprive the master of such pre-existing right of recaption."

Under this provision of the constitution, even without any legislation on the subject, the right of the master to reclaim the fugitive slave is fully secured, so as to give him a valid claim in damages against any one who interferes with the right. Glen *v.* Hodges, 9 *John. R.* 67.

[*States competent to do all that is necessary.*]

"But even if legislation on this subject is actually necessary, in order to secure to the master the full enjoyment of the right of recaption guarantied to him by the constitution, the State legislatures are perfectly competent to pass the necessary laws to carry this provision of the constitution into full effect. The members of the State legislatures, as well as other State officers, both executive and judicial, being bound by oath to support the constitution, it cannot legally be presumed that they will violate their duty in this respect. The constitution of the United States being the paramount law on this subject, the judicial tribunals of the respective States are bound by their oaths to protect the master's constitutional right of recaption, against any improper State legislation, and against the unauthorized acts of individuals, by which such right may be impaired; and the Supreme Court of the United States, as the tribunal of dernier resort on such a question, is possessed of ample powers to correct any erroneous decision which might be made in the State courts against the right of the master.

[*Result of the argument.*]

"Upon the fullest examination of the subject, therefore, I find it impossible to bring my mind to the conclusion, that the framers of the constitution have authorized the Congress of the United States to pass a law, by which a certificate of a justice of the peace of the States shall be made conclusive evidence of the right of the claimant to remove one who may be a free, native born citizen of this State, to a distant part of the Union as a slave, and thereby to deprive such person of the benefit of the writ of *habeas corpus*, as well as that of his common law-suit to try his right of citizenship in the State where the claim is made, and where he is residing at the time of such claim."

ARGUMENT OF HON. FRANCIS JAMES,

OF THE SENATE OF PENNSYLVANIA, ON TRIAL BY JURY.

The act of Congress authorizes the party claimant, his agent or attorney, to "*seize or arrest* such fugitive from labor, and take him or her before any judge," &c. The constitution of the United States says, that "the right of the people to be secure in their *persons*, houses, papers, and effects against *unreasonable searches* and *seizures*, shall not be violated. Now, sir, gentlemen must show, either that persons who, from the color of their skin, may

become the object of this unceremonious *seizure* are not embraced within the meaning of the word "*people*," or they must prove that the *seizure* is not an *unreasonable* seizure; or they must admit that *this* part of the law of Congress, at least, is an infringement not only of the *spirit* but of the *letter* of the constitution.

Again, the act of Congress empowers and directs any judge or magistrate before whom such reputed fugitive may be taken, upon proof to the satisfaction of such judge or magistrate, either by oral testimony, *or affidavit* taken before and certified by a magistrate of any such State, that the party claimed owes service to the party claimant, to give a certificate thereof to the party claimant, his agent, or attorney, to remove the fugitive to the State or territory from which he fled. Thus we perceive that after the arrest, and when the reputed fugitive is brought into the presence of the judge, his destiny *may* hang upon the contents of a single *exparte* affidavit. Who before ever heard of such mockery of justice? Show me, if you can, upon the statute books of any nation claiming to be free, the shadow of a law that sports thus with human liberty and human rights. A man! aye, sir, a *man* tried, convicted, and sentenced to hopeless, and in many instances worse than Egyptian bondage, upon an *exparte* affidavit? And yet such is the law of Congress.

Mr. Chairman, I take upon me to say, that so far is the law of Congress from agreeing with the constitution, there is not a syllable, a word, or a letter of that invaluable instrument, that does not frown upon that law by reason of the injustice of its provisions. Go search the catalogue of human wrongs—trace the history of him who has suffered *most* from oppression; follow him through every scene of bodily and mental anguish, and after you shall have collected the particulars of his tale of wo, weigh it in the balance with the story of the freeman, torn from his "family and his home," and, by means of false testimony, which the act of Congress gives him no opportunity to disprove, adjudged to be a slave, and see which will preponderate. Here is the story, sir, plain, simple, and undisguised. "I was *seized* without warrant, in a land which boasts of its freedom and the justice of its laws; carried before a judge, and there upon an *exparte* affidavit, without the intervention of a jury, sentenced to perpetual bondage." This may be the tale of a *freeman*, of him who has felt and knows how to appreciate the blessings of liberty.

It has been determined by the Supreme Court of the United States in the case of Martin *v.* Hunter's Lessee, 1 *Wheaton*, 326, that "the government of the United States can claim no powers which are not granted to it by the constitution, and the powers actually granted must be such as are *expressly* given, or given by *necessary* implication.

Judge Tucker in his 1 *Blackstone*, *App.* p. 151, says, "that the Constitution of the United States, as a social compact, ought to receive a strict construction, whenever the right of personal liberty, of personal security, or private property, may become the object of dispute, because every person whose liberty or property was thereby rendered subject to the new government, was antecedently a member of a civil society, to whose regulation he had submitted himself, and under whose authority and protection he still remains, and in all cases not *expressly* submitted to the new government.'

ARGUMENT OF WILLIAM JAY, Esq.,

OF BEDFORD, WEST CHESTER, N. Y.*

On the question, *Is the act of Congress of* 1793, *relative to fugitives from labor, constitutional?*

The answer to this question must, of course, depend on the *power* given to Congress by the constitution to pass the act alluded to.

"The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."—(See 10th *Amendment.*) Hence it is indisputable,

First, That Congress possess no power to legislate on the subject, unless such power is *delegated* by the constitution; and

Secondly, That if such power is *not* delegated to Congress, nor prohibited to the States, it is *reserved* "to the States respectively."

The 3d clause of the 2d section of the 4th article is the only provision relating to this subject in the whole constitution, and this clause *imposes obligations on the States*, but confers *no power* whatever on Congress. Hence the power of directing the mode in which *these* obligations shall be discharged, not being delegated to Congress, is reserved to the States.

There are *other* obligations imposed by the constitution on the States, and, in several instances, the power of directing the mode in which they are to be discharged *is* delegated to Congress, and such *special* delegation evinces the conviction of the framers of the constitution, that *without* such delegation the power could not be exercised by Congress.

For example, "The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."—(*Art.* 1, *Sec.* 2.)

Here is a duty imposed on the States to elect representatives every second year, but this clause, of itself, gives no power to Congress to fix a day on which the election shall be held—to specify who shall hold the polls—to prescribe the proof the electors shall offer of the required qualifications.

Again,—"The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof for six years." Here an obligation is imposed on the State legislatures to elect two senators for six years, but Congress is not therefore authorized to direct whether they shall be elected by ballot, or *vive voce*—by the two houses separately, or by both in convention. The following express *delegation* of power would not have been made, had the power been conferred by the mere injunction on the States to elect representatives and senators. "The *times*, *places*, and *manner* of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof, but the Congress MAY, at any time, by law, make, or alter such regulations, *except* as to the place of choosing senators."—(*Sec.* 4.)

Once more, "Full faith and credit shall be given, in each State, to the

* *Note.*—The following is an extract from a letter of Wm. Jay, to the compiler. It will account for the insertion of the argument contained in the text, and the alterations which were introduced in his Review of Judge Daggett, published in a former part of this work.

"I herein inclose a copy of the alterations I have made in my argument with Judge Daggett, intended for the enlarged edition of the 'Inquiry.' * * I also send you a brief argument relative to the act of Congress for the recovery of fugitive slaves, this latter does not belong to the 'Inquiry.' I commit it to your disposal; to my mind the argument is simple and conclusive."

public acts, records, and judicial proceedings of every other State."—(*Art.* 4, *Sec.* 1.) Does this declaration, or covenant, invest Congress with power to dictate to our courts *how* such "acts," &c., shall be verified? Certainly not; for otherwise there would have been no necessity for the following delegation of power. "The Congress MAY, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

"A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."—(*Art.* 4, *Sec.* 2.) Here again we have an obligation imposed on the States, but not followed, as in the above instances, with a delegation of power to prescribe the *mode* in which the obligation is to be discharged. Of course the power to prescribe what evidence shall be given that the alleged fugitive *is* charged with crime, how his identity shall be ascertained, and by what process he shall be arrested, and by what tribunal he shall be "delivered up," is, by the express terms of the constitution, "reserved to the States respectively." The same remarks apply, with equal force, to the 3d clause of this same section, viz: "No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

The obligation here imposed on the States is certainly binding, but the act of Congress prescribing the *mode* in which the States shall fulfil this obligation, not being founded on any delegation of power, is, in my opinion, as certainly void. It is worthy of remark, that the legislature of New York has disregarded the act of Congress, and has passed a law for the delivery of fugitives from labor in direct contravention of some of the provisions of the law of the United States. By the latter, a fugitive from labor may be delivered up by "*any* magistrate of a county, city, or town corporate," in which the fugitive is found. By the *New York Revised Statutes*, this power is restricted to a small number of magistrates, excluding all justices of the peace, and all judges of the county courts, unless of the degree of counsellor of the supreme court. Other States, it is believed, have also disregarded the act of Congress, and specified the magistrates by whom the fugitive is to be delivered up, and two States have granted to the fugitive the privilege of trial by jury. In my opinion, however, the *mode of trial* prescribed by the act of Congress has nothing to do with the constitutional question. Congress has no more right to enact that the fugitive shall be given up on the verdict of a jury, than on certificate of a justice of the peace.

Congress has no right to legislate on the subject.

ARGUMENT OF SALMON P. CHASE, Esq.

In the case of the colored woman, Matilda, who was brought before the Court of Common Pleas of Hamilton County, Ohio, by Writ of Habeas Corpus, March 11, 1837.

[It is not intended here to give the whole of the very elaborate argument of this gentleman, in this case, but extracts merely on points of *general* application. The argument presented the question in two aspects:

1. *The insufficiency of the warrant of commitment.* Under this head he raised several objections to the *form* and *regularity* of the proceedings. This part of the argument is omitted.

2. *The authority of the magistrate;* which involved *the constitutionality* of the law of Congress, of 1793, relative to fugitives from labor. This point was argued with reference—(1.) To the constitution of the United States. (2.) The ordinance of '87 for the government of the territory north west of the Ohio river; and (3.) The laws of the State of Ohio. The first of these branches of argument is extracted; the others are omitted.

(Extracts.)

* * * * * How vast the disparity between the opposite consequences of erroneous decision! If there be error on the one hand, it may consign to hopeless bondage, a human being, rightfully free: on the other, it would but deprive a master of the services of a single individual, legally a slave.

But in discussing the question in the case, I seek no aid from feeling. True, a fellow-being sues to this honorable court for that protection against slavery, which she can look for no where else upon earth. True, it is a helpless and almost friendless woman who sues for this protection; but I know, that, however much individuals of the court may feel for her, she can expect no aid from such feelings. This court will administer the law.

I maintain that the act of Congress, [of Feb. 12th, 1793,] which authorizes justices of peace, *without a jury*, to try and decide the most important questions of personal liberty, which makes the certificate of a justice a sufficient warrant for the transportation out of the State, of any person whom he may adjudge to be an escaping servant,—is not warranted by the constitution of the United States. [Which is evident from:—

1. *The nature of the Constitution.*]

The constitution establishes a form of government, declares its principles, defines its sphere, and confers its powers. It creates the *artificial* being denominated "the government," and breathes into it the breath of life.

It also establishes certain articles of *compact*, or agreement, between the States. The creation of a government, and the establishment of a compact, are entirely distinct in their nature. *Clauses of compact confer no powers* on the government. In this view I am fully sustained by the authority of Chief Justice Shaw, of Massachusetts. In his opinion in the case of the slave child, Med, he says, "The constitution of the United States partakes both of the *nature of a treaty* and of *the form of government.* It regards the States, to a certain extent, as sovereign and independent communities, with full powers to make their own laws and regulate their domestic policy, *and fixes the terms upon which their intercourse shall be conducted.* In respect *to foreign* relations, it regards the people of the United States as one community, *and constitutes a form of government for them.*" Now, what is the clause in the constitution in regard to fugitives from labor? *It is an article of agreement between the States*, and is expressed in these words: "*No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation*

thereof, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service may be due." This clause confers no power on government, or on any officer or department of government. It says nothing about the government, or its officers, or its departments. It declares that the citizens of no State in the Union, legally entitled to the service of any person, shall be deprived of that right to service, by the operation of the laws of any State into which the servant may escape; and it requires such State to deliver him up, on the claim of the lawful master. The clause, then, *restrains* the operation of the State constitutions and State laws in a particular class of cases; and it obliges, so far as a *compact* can oblige, each State to the performance of certain duties towards the citizens of other States. The clause has nothing to do with the creation of a form of government. It is, in the strictest sense, a clause of compact, and is the only provision in the constitution which at all relates to fugitives from labor.

[2. *No power is conferred upon Congress to legislate relating to fugitive servants.*]

The whole legislative power of Congress is derived, either from the general grant of power, "*to make all laws necessary and proper for carrying into execution all the powers vested by the constitution in the government of the United States, or in any department or officer thereof,*" *or from special provisions in relation to particular subjects.* If Congress has any power to legislate upon the subject of fugitives from labor, it must be derived from one of these sources,—from the general grant, or from some special provision. It cannot be derived from the general grant, because the clause in regard to fugitives from labor, vests no power in the national government, or in any of its departments or officers; and the general grant of legislative power is expressly confined to the enactment of laws, necessary and proper to carry into execution the powers so vested. Nor can it be derived from any special provision; for none is attached to the clause relating to fugitives from service. The conclusion seems inevitable, that the constitution confers on Congress no power to legislate in regard to escaping servants. Where then is this power? Undoubtedly it is reserved to the States; for "all powers not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people." The constitution restrains the operation of the State constitutions and the State laws, which would enfranchise the fugitive. It also binds the States to deliver him up on the claim of the master, and, by necessary inference, it obliges them to provide a tribunal before which such claim may be asserted and tried, and by which such claims may be decided upon, and, if valid, enforced; but it confers no jot of legislative power on Congress.*

This construction of this clause in the constitution, is strengthened by reference to another provision. The first clause of the first section of the same article, in which the provision in regard to escaping servants is found, is in these words: "*full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State.*" This clause, so far, is of the same nature with the clause in regard to fugitives from labor. It is a clause of compact, and it pledges the faith of each State to the faithful observance of it. But it confers no power on government, or any of its departments or officers. Congress, therefore, could not legislate in reference to the subject of it, in virtue of the general grant of legislative power. Aware of this, the framers of the constitution annexed to this first clause, a second, specially providing that Congress might "pre-

* *Note.*—See Mr. Jay on this head, on pages 96, 97.

scribe, by general laws, the manner in which such acts, records, and proceedings shall be proved, and the effect thereof." Am I not right in saying that the framers of the constitution were aware, that without this special provision, Congress would have no power to legislate upon the subject of the section? If the *first* clause confers on Congress legislative power, *why* add the *second?* Why add it, if legislative power is conferred by the general grant, or by any other provision in the constitution? The framers of the constitution were men of large experience. Among them were Hamilton, and Madison, and Washington. To *them* the second clause of the section appeared fit and necessary. Now, if *a special* provision was necessary to enable Congress to legislate in regard to the authentication and effect of records, why is not a special provision necessary to enable Congress to legislate in regard to fugitive servants? Both clauses of the constitution are of the same nature. Neither has any thing to do with creating, organizing, or energizing a form of goverment. Both are articles of compact. If, then, the framers of the constitution had intended that Congress might legislate in reference to the subjects of both, would not special provisions, conferring such legislative power, have been annexed to both? Is not the annexation of such a special provision to *one* clause, and *not* to the *other*, decisive evidence that the convention intended to *confer* legislative power in regard to the object of one clause, and to *withhold* legislative power in reference to the subject of the other? This conclusion seems to me inevitable.

[3. *Reasons why such power should not be conferred on Congress:*
(*a.*) *Because dangerous to personal liberty and State rights.*
(*b.*) *Because such power in the hands of inferior magistrates liable to abuse, and irresponsible.*]

Nor is it difficult to assign valid and substantial reasons why the convention should not entrust to Congress any legislative power upon the subject. Let us suppose that, when this clause about escaping servants was under discussion, a member had proposed to annex another clause in these words, "And Congress shall have power to appoint officers in each State to try and determine the validity of such claim, and to provide by law for the apprehension and re-delivery of persons so escaping,"—would not the answer have been, "What! give Congress power to appoint officers to try questions of personal liberty, and to provide for the arrest and re-delivery of all persons who may be claimed as escaping servants? Who would be safe under such a constitution? What personal right conferred by God and guarantied by the State constitutions, might not be prostrated under it? Who might not be claimed as a fugitive from labor? Who would be secure against condemnation to servitude? To little purpose has liberty been achieved, if only to be placed in jeopardy like this." If this had been incorporated into the constitution, can any believe that it would have received the assent of the States?

But a power vested in Congress, as just stated, by a *special* provision, would not be so objectionable as the power assumed by the law of '93. Under such a provision, Congress would have appointed officers by name; and the officers so appointed would have been known and responsible. But *how* is it in point of fact? Has Congress selected individuals fitted by nature and by education for this important trust? Persons of sufficient knowledge, sound judgment, and undoubted integrity? Not at all. By one sweeping enactment, it has appointed *all the magistrates of all the counties, cities, and towns corporate throughout the Union*, judges of these grave questions; *judges, too, in the last resort;* judges, from whose decision there is no appeal; judges, with whose proceedings, so long as they strictly pursue the act, no State court and no court of the United States can interfere.

And, as if this were not enough, the magistrates, in the exercise of this special jurisdiction, are effectually shielded from all responsibility for misconduct. As State magistrates they are not liable to federal impeachment, and as federal officers they are not liable to State impeachment. And if criminally prosecuted, they may protect themselves under their judicial character. Congress cannot remove them from office, for they exercise their powers under the act of Congress in virtue of their offices as magistrates; and they derive their appointment as magistrates, not from Congress, but from the States. Some of them are elected by the people,—some are appointed by the executive authority—some are appointed by town or city councils—some hold their offices for a term of years—some are elected annually—some hold during good behavior—some are compensated by salaries—others by fees—but none by the United States. For their services under the act of Congress, they must make the best bargain they can with the claimants who seek their aid.

To complete the picture, the act omits to require them to hear the proofs of claim in public, or to pronounce a public judgment, or to keep any record of their proceedings. And before these magistrates, generally thus qualified, thus always and completely irresponsible, and thus exposed to temptation, this act of Congress provides that *any person may be dragged, by any person who chooses to set up a claim to him as a fugitive servant, to undergo trial for his personal liberty.* And can it be that the framers of the constitution intended to confer on Congress power to enact such a law as this? Can it be that the States adopted this constitution, knowing and understanding that it authorized the enactment of this, or any similar law? If they did, the great principles which had hallowed their recent struggle were strangely forgotten. We have little cause to boast of the security with which our institutions surround personal rights, so long as this act is held to be sanctioned by the constitution of the United States.

[4. *The law of '93 is repugnant to the United States constitution as an exercise of the appointing power.*]

But this act is not only unauthorized by the federal constitution, but is directly repugnant to some of its plainest provisions. By the second section of the second article, it is made the "*duty of the President* of the United States, with the advice and consent of the Senate, *to appoint ALL judicial officers.*" Congress, it is true, may vest the appointment of inferior officers in the president alone, in the courts of law, or in the heads of departments; but there is no clause in the constitution which authorizes Congress to retain the appointment of a single officer in its own hands; and yet, here we have Congress appointing thousands of federal officers at once. The act on which I am commenting, appointed all who then were, and all who might afterwards become magistrates of counties, cities, and towns corporate, throughout the Union, judges of the United States, with a special jurisdiction. What law can be repugnant to the constitution if this be not? What law may not Congress enact, if they can enact this law?

But, perhaps, we shall be told that this act does not appoint the State magistrates to be federal officers, but merely *transfers* to them a certain portion of federal judicial power, to be exercised concurrently with the judges of the circuit and district courts. This is a mere formal distinction. To confer on State magistrates federal powers, is to make them, so far, federal officers.

[5. *The law of '93 exposes the people to unwarrantable seizures.*]

The act relating to fugitives from service, is also repugnant to the fourth and fifth amendments of the constitution, proposed by Congress at the

instance of Virginia,* to the States, and by the States adopted and ratified as parts of that instrument. The first clause of the fourth amendment is in these words: "*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.*" Now, how could the people be more completely exposed to unreasonable seizures, than by this act of Congress? Under its sanction, any man who claims another as his servant, may seize and confine him. It is idle to say that none but escaping servants can be seized. The first step is to seize; the next is to take the person seized before a magistrate; and then the validity of the claim is to be tried. It may turn out to be invalid; and in that case personal rights will have been grossly violated. Very frequently instances occur in which personal rights are thus violated. And when we reflect that the questions on which the validity of the claim depends, are often nice and intricate; that it may be the interest of the magistrate to resolve every question as the claimant may desire; that the claimant is permitted to make out his case by affidavits—that these affidavits, there being no cross-examination, will always be strongly in his favor, and may often be false; can we wonder that these outrages against personal rights do not always terminate at the threshold of the magistrate? Can we wonder that, "upon pretence of seizing fugitives from labor, under the provision of this act, unprincipled persons have kidnapped free persons, transported them out of the State, and sold them into slavery?" Is not "this inhuman and infamous practice," the natural and inevitable consequence of this act? And can such an act consist with that security from unreasonable seizure, which the constitution solemnly guarantees to the people? I think not.†

[6. *The law of '93 takes away liberty without due process of law.*]

The third clause in the fourth amendment of the constitution, is in these words: "*No man shall be deprived of life, liberty, or property, without due process of law.*" But the act of Congress provides, that persons may be deprived of their liberty without *any* process of law. It provides no process for the apprehension; none for the detention; none for the final delivery of the escaping servant. Every thing is to be done by the claimant. He is to arrest the fugitive, or the person whom he may take to be the fugitive; he is to bring him before the magistrate; he is to keep him in custody while the magistrate examines the evidences of the claim; he is to remove him when the certificate is granted. From beginning to end of the proceeding, there is nothing like legal process. And yet the whole proceeding is recognised by the act of Congress. The act, then, is palpably and utterly repugnant to the very letter, as well as the whole spirit of the constitution. And not only so, but it is subversive of the fundamental principles on which all civil society rests. Let such acts be passed in reference to *other* civil rights. Let each man be authorized to reclaim property, and enforce rights, in this summary way. If one claims a horse found in the possession of another, instead of resorting to due process of law, let him seize or arrest him, and take him before the nearest magistrate, and there prove his claim. If a man claims services of another, which he will not perform, instead of going to law about the matter, let him drag his recusant neighbor before a justice, prove his claim to service, and then remove him to his task. How long would society hold together, if this principle were carried into general application?

* 4 Elliott's Debate, 216, 217.

† *Note.*—See Hon. F. P. James on this point, on pages 94, 95.

Other arguments there are to the point, that Congress have no power to pass a law wresting from any person the right of trial by jury, and, did space permit, might be added—but the limits proposed at the beginning of this compilation are already transcended, and it must be brought to a close.

HINTS OF MR. BIDDLE'S ARGUMENT,

On the words "delivered up."

In the recent Reform Convention of Pennsylvania, on the motion to amend the clause in the Bill of Rights relating to trial by jury, James C. Biddle, Esq., of Philadelphia, maintained that the law of Congress (of '93) was unconstitutional, on the ground that it was in direct conflict with the legal and constitutional import of the words, "shall be delivered up," as contained in the clause of the constitution upon which the law itself purports to be founded. He contended that the obligations intended to be created by the words, "shall be delivered up," were well defined and certain—always implying an appeal from one sovereignty to another. That "the delivery up" spoken of in the constitution, was one thing—and that the "arrest and seizure" contemplated by the act of Congress was an entirely different thing. "The delivery up" contemplated by the constitution, he contended was the same usually intended by *that phrase* when used in treaties between sovereign powers. It was a phrase well known in the law of nations, and had a settled, legal import, and always meant, "a delivery up" by the sovereignty of a State, on an appeal from the head or sovereignty of another State. This position he supported by reference to numerous cases occuring in the history and courts of this country. He quoted, also, copiously from the law of nations. He contended that to allow a stranger,—a person wholly unknown to our society and laws, to come in, seize, and arrest a citizen, tear him from the community he lives in—from the protection of the commonwealth, and after a summary trial before a magistrate of his own choosing, perhaps, to drag him off to slavery, was a proceeding never contemplated by the words of the constitution. The language meant no such thing; but its purport was clear, and settled to be, as he had stated it. In this sense it was used, and so it had always been understood, in the preceding clause of the constitution relative to fugitives from justice. So it had been used in the articles of confederation, for in that the clause was also found. And so it was intended to be used in the clause relative to fugitives from labor. The arrest and seizure contemplated by the act of Congress, he held was not a fulfilment of the clause of the constitution stipulating for "a delivery up"—which was a well known and settled arrangement between sovereign powers—but it was a violation of it.—It was a prostration of the checks and safeguards it was intended to afford. It was in the former case putting that in the power of inferior magistrates to do, which in the latter could only be done by the highest officer—the sovereign power of a State.

It may be added, this construction of the words "shall be delivered up," receives confirmation from the provisions of an act of Congress of March 3d, 1801, supplementary to an act concerning the District of Columbia, which was quoted by Mr. Scott. By that law, Congress in legislating for the District, *does not*, as in the law of '93, *confer* authority to deliver up *upon any magistrate of any city or town corporate* wherein a fugitive may be seized, but on the chief justice of the District, who, as being the highest officer of the law belonging to the District, (for there is no officer corresponding with that of a governor of a State) is the person selected to perform this duty. Sec. 6 of the law provides, "that in all cases where the constitution or laws of the United States provides that criminals or fugitives from justice, *or persons held to labor in any State escaping into another State*, shall be delivered up, the *chief justice* of the said District shall be, and he is hereby empowered and required to cause to be apprehended and delivered up such criminals, fugitives from justice, *or persons fleeing from service*, as the case may be, who shall be found within the said District *in the same manner and under the same regulations as the executive authority* of the several States are required to do the same."

HINTS OF MR. STEWART'S ARGUMENT,

On the phrase "due process of law."

Alvan Stewart, Esq., of Utica, has elaborated a very bold and startling argument, based upon a clause in the 5th article of the amendments of the constitution of the United States, the latter part of which, viz. "nor shall any person be deprived of life, liberty, or property, without due process of law," he says, is an extract, almost in words and spirit, from Magna Carta—the great bill of England's liberties. And from this clause he deduces the conclusion, that Congress has entire and absolute right, by a declaratory law, to abolish slavery in every State and territory in the Union. Without pretending to pass upon the correctness of the conclusion in its broadest sense, we cannot, in justice, omit so much of the argument as bears upon the question of jury trial in the case before us.

Unless, says this gentleman, slavery has corrupted our language so as to make it palter in a double

sense—to keep the word of promise to the ear, but break it to the hope—unless it has changed the primitive meaning, and eat out the heart and soul of words, employed and understood as conveying certain and fixed ideas, of which these words have been representatives from the days of King John, in the vale of Rune-Mead, to the adoption of the federal constitution, then can we have no doubt, that every human being in this Union, black or white, bond or free, has invaluable blessings secured to him by the article referred to. The sturdy barons of England compelled their king to subscribe Magna Carta 500 years ago, containing the words of our article, and, from that day to this, every Englishman and American is entitled to the benefits of the invaluable guarantee, "that no person shall be deprived of life, liberty, or property, without due process of law," as a part of his inheritance and birthright.

But what, he inquires, is meant by the words "DUE PROCESS OF LAW?" It is important to know what that due process of law can be, which has power to deprive a man of his life, liberty, or property.

No lawyer, (he answers,) worthy the appellation, in England or this commonwealth, will deny that the true and only meaning of the phrase, "DUE PROCESS OF LAW," is *an indictment or presentment by a grand jury—a trial by a petit jury—and a judgment pronounced on the finding of that jury, by the court.* And this interpretation, he argues, is affirmed by Justice Story in his Commentaries of the Constitution of the United States. Speaking of the 5th article of the amendments, (p. 663,) in reference to the part containing the clause under consideration, "nor shall any person be deprived of life, liberty, or property, without due process of law," &c. "this," he says, "is but an enlargement of the provisions of Magna Carta, '*Nec super eum ibimus, nec super eum multimus, nisi per legales judicium parium suorum, vel per legem terræ.*'"*

And Lord Coke says, that the latter words *per legem terræ* (by the law of the land) have always been construed to mean by due process of law, *i. e.*, by due presentment or indictment, and being brought in to answer thereto by due process of law. So that, in effect, says Mr. Stewart, the clause affirms the right of trial according to the process and proceedings of common law.—2 *Inst.* 50, 1 *Tucker's Blk. App.*, 2 *Kent's Com.* 10.

Another point discussed by Mr. S. is, whether the term "person" in the clause is, by a fair construction, applicable to the case of a *slave.* On this head, he says "The term person here means a slave; and so in other parts of the constitution the word person is used for slave. As in the 3d clause of the 2d section, article 1, wherein it is said, that

"Representatives and direct taxes shall be apportioned among the several States according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service, and excluding Indians not taxed, three-fifths of *all other persons.*"

Here "all other persons" mean slaves.

The word "*person,*" in the 2d section of the 4th article, relating to persons held to service or labor, and the word in the 5th article of the amendments, "nor shall any '*person*' be deprived, &c., means slave. For if slave were not meant here, the same word having been twice used in the instrument to denote slaves, slaves would have been excepted, "Nor shall any person (except slaves) be deprived," &c.

In the clause as to the basis of representation, the word "persons" means slaves exclusively. And in the clause "No person held to labor or service," &c., in section 2d, article 4th, slaves not only are meant, but white apprentices bound for a limited term, the sons and daughters of parents, being minors, or a man's wife, escaping to another State, may be delivered up.

The words "any person," in the 5th article of the amendments, "Nor shall any person be deprived of life, liberty," &c., covers the whole ground of our common humanity, and means every body without exception. As if it had said, no human being now living in the United States, or hereafter to live, shall be deprived of life, liberty, or property without due process of law.

It being then established that, by "*due process of law,*" a regular indictment, trial, a verdict, and a judgment of law in pursuance of it, is always intended; here I assume, says Mr. S., at this stage of the argument, that there is not a slave at this moment in the United States, upon the terms agreed on by the people of this country at the formation of the constitution. And, if this be true, any judge in the United States may discharge a slave on habeas corpus; and no judge or magistrate of any court in the free or slave States, is authorized to make an order to deliver up a fugitive slave, unless the master produces a record of the conviction of the slave, showing that he has been deprived of his liberty on indictment, the verdict of a jury, and judgment of a court thereon, according to due process of law.

* *Note.*—"Neither will we pass upon him, or condemn him, but by the lawful judgment of his peers or by the law of the land."